

No. 11962

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PROCTER & GAMBLE MANUFACTURING CO.,
Appellant,

vs.

H. F. METCALF, Trustee in Bankruptcy of the Estate
of F. P. Newport Corporation, Ltd., Bankrupt, DOR-
OTHY DAY, MARTHA McMILLEN, MATILDA
OLSEN, WILLIAM H. NEBLETT, MRS. F. P.
NEWPORT, EUGENE P. CLARK, E. P. NEW-
PORT CORPORATION, LTD., RUBY E. NEB-
LETT, SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES and JOSEPH SATTLER,
Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME I

(Pages 1 to 208, Inclusive)

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

AUG 28 1948

PAUL P. O'BRIEN,

No. 11962

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Adjudication of Bankrupt and Order of Reference.....	5
Appeal.	
Notice of	95
Order re Original Exhibits (District Court).....	96
Petition for Order re Exhibits and Order (Circuit Court)	424
Statement of Points on (Circuit Court).....	423
Certificate of Clerk	97
Findings of Fact, Conclusions of Law and Order of Referee	26
Memorandum of Security-First National Bank of Los Angeles in Support of Petition for Authority to Sell Real Property	22
Minute Order Entered February 28, 1945.....	6
Minute Order Entered March 11, 1948.....	60
Minute Order Entered April 26, 1948.....	87
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	95
Objections of Creditors and of Bankrupt to Proposed Sale of Real Property	12
Objections of Procter & Gamble Manufacturing Co. to Proposed Order Vacating Order of Referee.....	88
Objections of Ruby E. Neblett to Proposed Sale of Property to Procter & Gamble Co.....	21
Order re Original Exhibits (District Court).....	96
Order re Original Exhibits (Circuit Court).....	425

	Page
Order re Review from Referee's Order.....	63
Order re Supplemental Certificate on Review.....	65
Order Vacating and Setting Aside Referee's Order of Dec. 19, 1947. re Sale of Real Property to Proctor & Gamble Manufacturing Co.....	91
Petition for Authority to Sell and for Confirmation of Sale of Real Property to Procter & Gamble Manu- facturing Co.	7
Petition for Order re Exhibits and Order (Circuit Court)	424
Petition in Bankruptcy, Creditors' Involuntary.....	2
Petition to Review Referee's Order	36
Referee's Certificate on Review	49
Referee's Certificate on Review, Supplemental	66
Exhibit "A." Letter of Joseph Sattler to L. H. Wiggers, Dated Aug. 16, 1945.....	68
Exhibit "B." Letter of Joseph Sattler to Atchison, Topeka & Santa Fe Ry. Co., Dated Aug. 16, 1945..	69
Exhibit "C." Letter of W. T. McWhorter to Jo- seph Sattler, Dated Sept. 4, 1945.....	70
Exhibit "D." Letter of Joseph Sattler to W. T. McWhorter, Dated Sept. 8, 1945.....	71
Exhibit "E." Letter of John O'Melveny to Joseph Sattler, Dated Oct. 1, 1945.....	72
Exhibit "F." Letter of W. T. McWhorter to John O'Melveny, Dated Sept. 11, 1945.....	73
Exhibit "G." Letter of Joseph Sattler to W. T. McWhorter, Dated Oct. 12, 1945.....	75
Exhibit "H." Letter of C. R. Pickering to Joseph Sattler, Dated Sept. 14, 1945	76
Exhibit "I." Letter of Joseph Sattler to C. R. Pickering, Dated Sept. 18, 1945.....	77

Referee's Certificate on Review, Supplemental:	Page
Exhibit "J." Letter of Joseph Sattler to W. T. McWhorter, Dated Dec. 4, 1945.....	78
Exhibit "K." Letter of Joseph Sattler to W. T. McWhorter, Dated Dec. 28, 1945.....	79
Exhibit "L." Letter of W. T. McWhorter to Joseph Sattler, Dated Jan. 4, 1946.....	80
Exhibit "M." Letter of Joseph Sattler to W. T. McWhorter, Dated Jan. 8, 1946.....	81
Exhibit "N." Letter of Joseph Sattler to W. T. McWhorter, Dated Feb. 7, 1946.....	82
Exhibit "O." Letter of Joseph Sattler to W. T. McWhorter, Dated Feb. 21, 1947.....	83
Exhibit "P." Letter of W. T. McWhorter to Joseph Sattler, Dated Feb. 24, 1947.....	84
Exhibit "Q." Letter of Joseph Sattler to W. T. McWhorter, Dated Feb. 28, 1947.....	85
Reporter's Transcript of Proceedings (Hearings on Objections to Sale by the Trustee, In re: Parcel to Procter & Gamble) Filed March 1, 1948.....	99
Objector's Exhibits (see Index to Exhibits).	
Trustee's Exhibits (see Index to Exhibits).	
Testimony on Behalf of Certain Creditors and the Bankrupt:	
Burgess, Clark C.—	
Direct examination	238
Cross-examination (by Mr. Lynch).....	241
Cross-examination (by Mr. Iverson).....	242
Redirect examination	244
Recross-examination	244
Redirect examination	246

Reporter's Transcript of Proceedings (Hearings on
Objections to Sale by the Trustee, In re: Parcel to
Procter & Gamble) Filed March 1, 1948: Page

Testimony on Behalf of Certain Creditors and the
Bankrupt:

Correy, Albert A.—

Direct examination	247
Cross-examination (by Mr. Lynch).....	258
Cross-examination (by Mr. Iverson).....	261
Redirect examination	262

Gribble, J. B.—

Direct examination	276
--------------------------	-----

Higgins, Harry C.—

Direct examination	100
Cross-examination (by Mr. Lynch).....	105
Cross-examination (by Mr. Iverson).....	106
Redirect examination	109
Recross-examination	109

Johnson, H. V.—

Direct examination	126
Cross-examination	141
Redirect examination	154

Mead, Roy G.—

Direct examination	163
Cross-examination	171
Redirect examination	172
Direct examination (recalled).....	201
Cross-examination	214
Direct examination (further).....	264
Cross-examination	266

Metcalf, H. F.—

Direct examination	269
--------------------------	-----

Reporter's Transcript of Proceedings (Hearings on
Objections to Sale by the Trustee, In re: Parcel to
Procter & Gamble) Filed March 1, 1948: Page

Testimony on Behalf of Certain Creditors and the
Bankrupt:

Newport, H. G.—

Direct examination	278
Cross-examination	284
Redirect examination	285
Recross-examination	286
Redirect examination	286

Testimony on Behalf of Trustee:

Follansbee, G. F. Jr.—

Direct examination	223
Cross-examination	225
Redirect examination	235
Recross-examination	236

Metcalf, H. F.—

Direct examination	114
Cross-examination	123

Testimony on Behalf of Security-First National
Bank:

Adams, R. T.—

Direct examination	287
Cross-examination (by Mr. Nelson)	287
Cross-examination (by Mr. Cahill)	289
Redirect examination	289

Mason, Thomas F.—

Direct examination	178
Cross-examination	185

	Page
Reporter's Transcript of Proceedings (Partial Transcript in re Joseph Sattler Commission on Sale of Real Property) Filed March 29, 1948.....	290
Reporter's Transcript of Proceedings Filed June 10, 1948	292
Testimony on Behalf of Certain Petitioners:	
Mtecalf, H. F.—	
Direct examination	300
Reporter's Transcript of Proceedings Filed June 11, 1948	312
Testimony on Behalf of Petitioners:	
Metcalf, H. F.—	
Direct examination	317
Cross-examination	340
Statement of Points on Which Appellant Intends to Rely on Appeal (Circuit Court).....	423
Supplemental Certificate on Review, Referee's.....	66
Exhibits (see Referee's Certificate on Review, Supplemental).	

INDEX TO EXHIBITS.

Trustee's Exhibits:

No.	Page
1. Map	114
2. Three Letters from O'Melveny & Myers, Dated September 9, 1947, October 15, 1947 and Octo- ber 28, 1947	116
3. Letter from Winter Construction Co., Dated November 12, 1947.....	117
4. Copy of Newspaper (Press-Telegram of March 24, 1946)	118
5. Map	139
7. Report by Mr. Mason to Mr. Metcalf.....	142
8. Aerial Photograph	148

Objector's Exhibits:

(By Reference) Lease.....	196
(By Reference) Lease.....	220
No. 00. Electric Log	228
Letter of July 2.....	274

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In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 25308-M

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,

Alleged Bankrupt

CREDITORS' INVOLUNTARY PETITION IN
BANKRUPTCY

To the Honorable, the Judges of the Central Division
of the United States District Court for the Southern
District of California:

The petition of C. G. Kinsey, W. B. Halligan, and
Hiram E. Casey, as Trustee of the Estate of Charles R.
Stuart, a Bankrupt, respectfully shows and alleges:

I.

That at and during all the times herein mentioned the
F. P. Newport Corporation, Ltd. was and is a corpora-
tion, and has had its principal place of business at 106
West 6th Street in the City of Los Angeles, County of
Los Angeles, State of California for the greater portion
of the six months next preceding the filing of this peti-
tion, and owes debts in the amount of One Thousand
(\$1,000.00) Dollars and over, and the same is a com-

[HEC] doing a realty business

mercial corporation, and is not a municipal, railroad,
insurance or banking corporation or a building and loan
association.

II.

That your petitioners are creditors of the said F. P.
Newport Corporation, Ltd. having provable claims

mounting in the aggregate in excess of securities held by them to the sum of Five Hundred (\$500.00) Dollars and more. That the nature and amounts of your petitioners' claims are as follows, to-wit: [2]

(a) The claim of your petitioner C. G. Kinsey is a balance due for work and labor performed and services rendered to the said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$2,500.15 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof is now due, owing and unpaid from the said Alleged Bankrupt to the said C. G. Kinsey;

(b) The claim of your petitioner W. B. Halligan is a balance due for work and labor performed and services rendered to the said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$613.32 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof is now due, owing and unpaid from the said Alleged Bankrupt to the said W. B. Halligan;

(c) The claim of your petitioner Hiram E. Casey as Trustee in Bankruptcy for Charles R. Stuart, Bankrupt, is based upon a judgment procured by the said Hiram E. Casey as Trustee of the said Charles R. Stuart, Bankrupt, in the sum of \$766.97, which said sum was procured in the Municipal Court in the City of Los Angeles, County of Los Angeles, State of California, on the 12th day of June, 1934, in an action therein numbered 346125 wherein your said petitioner was the plaintiff and the said Alleged

Bankrupt herein was the defendant; that no part of the said sum has been paid, and the whole thereof remains due, owing and unpaid.

III.

That the said Alleged Bankrupt, F. P. Newport Corporation, Ltd. is insolvent, and that within four months next preceding [3] the date of this petition and while insolvent the said F. P. Newport Corporation, Ltd. committed an act of Bankruptcy in this, that it did heretofore on or about the 15th day of March, 1935, transfer a portion of its property, to-wit, money in the sum of \$433.20 to a certain general unsecured creditor, to-wit, J. B. Gribble, with intent to prefer the said creditor over its other creditors in the same class, the payment of which said sum, as aforesaid, did then and there amount to a preference in favor of the said creditor.

Wherefore, your petitioner prays that service of this petition with the subpoena be made upon the said F. P. Newport Corporation, Ltd. as provided by the Acts of Congress relating to Bankruptcy, and that it may be adjudged by the Court to be a Bankrupt within the purview of the said Act.

C. G. KINSEY

W. B. HALLIGAN

HIRAM E. CASEY

Hiram E. Casey as Trustee of the Estate of
Charles R. Stuart, Bankrupt

HIRAM E. CASEY

Attorney for Petitioning Creditors. [4]

[Verified.]

[Endorsed]: Filed March 19, 1935. R. S. Zimmerman,
Clerk. [5]

[Title of District Court and Cause]

ADJUDICATION OF BANKRUPT AND ORDER
OF REFERENCE

At Los Angeles, in said District, on the 12th day of January, A. D. 1937, before the Honorable Wm. P. James, Judge of said Court in Bankruptcy, the petition of C. G. Kinsey, W. B. Halligan and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a Bankrupt, that F. P. Newport Corporation, Ltd., a corporation be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said F. P. Newport Corporation, Ltd., a corporation, is hereby declared and adjudged a bankrupt accordingly.

It Is Therefore Ordered, That said matter be referred to E. R. Utley, Esq., one of the Referees in Bankruptcy of this Court, to make such further proceedings therein as are required by said Acts; and that the said F. P. Newport Corporation, Ltd. shall attend before said Referee on the 19th day of January, at Los Angeles, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said involuntary bankruptcy.

Witness the Honorable Wm. P. James, Judge of the said Court, and the seal thereof, at Los Angeles, in said District, on the 12th day of January, A. D. 1937.

[Seal of the Court]

R. S. ZIMMERMAN

Clerk

By M. R. Winchell

Deputy Clerk

[Endorsed]: Filed Jan. 12, 1937. R. S. Zimmerman,
Clerk. [6]

[Minutes: Wednesday, February 28, 1945]

Present: The Honorable Paul J. McCormick, District Judge.

It is ordered that the following orders re-assigning cases heretofore pending before Ernest R. Utley, Esq., Referee in Bankruptcy, now resigned, be filed and spread upon the minutes, to wit:

* * * * *

In the District Court of the United States, Southern District of California, Central Division.

It appearing that Ernest R. Utley, Esq., has resigned as Referee in Bankruptcy in and for the County of Los Angeles, State of California,

It Is Ordered that the following cases heretofore pending before Ernest R. Utley, Esq., be and they hereby are transferred and re-referred to Hugh L. Dickson, Esq., duly qualified Referee in Bankruptcy in and for the County of Los Angeles, State of California for further proceedings pursuant to the Bankruptcy Act:

* * * * *

25308-M F. P. Newport Corporation

43277-H Diogenes P. Volkman

* * * * *

PAUL J. McCORMICK

Judge, U. S. District Court

February 28th, 1945.

Filed Feb. 28, 1945 at Min. past 5 o'clock P. M.
Edmund L. Smith, Clerk; by F. Betz, Deputy. [7]

[Title of District Court and Cause]

PETITION FOR AUTHORITY TO SELL AND FOR
CONFIRMATION OF SALE OF REAL PROP-
ERTY TO THE PROCTOR & GAMBLE MANU-
FACTURING CO., A CORPORATION

H. F. Metcalf, petitioner, respectfully represents unto the Court:

1. That petitioner is the duly appointed, qualified and acting Trustee in Bankruptcy herein.

2. That among the properties which have come into possession of petitioner as such Trustee is a portion of Rancho Los Cerritos situate in the City of Long Beach, County of Los Angeles, State of California, more particularly described as follows:

Beginning at the most Southeasterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577, Page 105 of Deeds, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the Southeast-erly line of the land described in said deed, North $19^{\circ} 42' 30''$ East 738.08 feet; thence North $64^{\circ} 42' 30''$ East 500 feet; thence South $19^{\circ} 42' 30''$ West 738.08 feet to a point in said Northwesterly line of Channel No. 3; thence along said Northwesterly line South $64^{\circ} 42' 30''$ West 500 feet to [8] the point of be-
ginning.

3. That legal title to said real property stands of record in the name of Security-First National Bank of Los Angeles as security for an obligation owing to said Bank by the bankrupt corporation as will more particularly appear by reference to an agreement dated January 12, 1937, made and entered into by and between said Trus-

tee in Bankruptcy, said Security-First National Bank of Los Angeles, the said bankrupt corporation and others, the supplement thereto and modifications thereof. Copies of said documents are on file with this Court, reference to which is hereby made for further particulars.

4. That on or about October 15, 1947, petitioner received an offer for the said property from The Procter & Gamble Manufacturing Co. in the sum of \$198,000 Subject to the following conditions:

- (a) That said Trustee in Bankruptcy can vest in the Company good title to said land, free of all claims, liens, encumbrances, conditions, restrictions, reservations, easements and rights of way, except that certain oil and gas lease hereinafter mentioned and except such matters as may be approved by the Company and that said Trustee provide the Company with a title policy in the principal amount of \$180,000 evidencing a good title as aforesaid.
- (b) That the Company's title to said land shall include all minerals, oil, gas and other hydrocarbon substances in, on or produced from said land, but reserving and excepting unto said Trustee in Bankruptcy all rents, royalties, and other things of value accruing pursuant to and prior to the expiration, surrender or other termination of that certain oil and gas lease dated January 14, 1938, by and between said Trustee in Bankruptcy et al., as Lessors, and the Universal Consolidated Oil Company, as Lessee, [9] and recorded in the office of the County Recorder of the County of Los Angeles in Book 15515, Page 326 Official Records, subject, however, to Trustee's obligation to pay all taxes relating to oil, gas or hydrocarbon substances in,

on or under said land prior to the expiration, surrender or other termination of said lease.

- (c) That said Trustee in Bankruptcy procure a letter addressed to the Company and executed by the proper officials of the Universal Consolidated Oil Company in a form approved by counsel for the Company and granting permission to the Company to use that portion of said land outlined on the map attached hereto as Exhibit A as a baseball park and a parking area.
- (d) That said Trustee in Bankruptcy pay all costs and expenses of every kind and nature pertaining to the removal of all obstructions on that portion of said land outlined on the map attached hereto, including, but without limiting the generality of the foregoing, all storage tanks, power poles, oil lines, sumps, steam lines and concrete walls (excepting the wall located upon the easterly border of said land).
- (e) That said Trustee in Bankruptcy pay all commissions relating to this transaction.
- (f) That said sale be consummated and a final order approving such sale be procured within sixty (60) days from October 27, 1947.

5. That petitioner is informed and believes and on such information and belief alleges that the cost of removing all of the storage tanks, power poles, oil lines, sumps, steam lines and walls mentioned in subdivision (d) of paragraph 4 hereof will be approximately between \$15,000 and \$16,000. Petitioner intends to have a [10] more definite statement of said costs available at the hearing of this petition.

6. That petitioner obtained from Universal Consolidated Oil Company oral permission to remove said storage

tanks, etc., mentioned in subdivision (d) of paragraph 4 hereof on condition that said Trustee in Bankruptcy pay the cost thereof. Petitioner proposes to have said approval or consent in writing available at the hearing of this petition.

7. That the said real property has been appraised and a copy of said appraisal is on file herein.

8. That subject to the approval of this Court, said petitioner has agreed to sell said real property to said The Procter & Gamble Manufacturing Co. for \$198,000 cash lawful money of the United States, subject to the conditions hereinbefore set forth.

9. That petitioner believes said sale is fair and adequate and to the best interests of the estate and the creditors thereof.

Wherefore Petitioner Prays:

1. That notice of the hearing of this petition be given as required by law.
2. That upon the hearing of said petition an order be made herein authorizing petitioner to sell said real property.
3. That the sale of said real property to The Procter & Gamble Manufacturing Co., a corporation, be approved and confirmed, Subject to the conditions set forth in the offer as hereinbefore set forth.
4. That petitioner be authorized to enter into a contract for the removal of the tanks, poles, oil lines, sumps, etc. set forth in subdivision (d) of paragraph 4 of this petition, in order to comply with the terms of the said offer.
5. That on payment of the purchase price of said real [11] property petitioner and Security-First National Bank of Los Angeles be authorized to exe-

cute and deliver to said purchaser a deed or deeds to said real property, reserving, however, unto the sellers all interests and rights, rents, royalties and other things of value accruing to Lessors pursuant to the said oil and gas lease made and entered into with the Universal Consolidated Oil Company, as lessee, hereinbefore referred to.

6. That out of the proceeds of said sale said petitioner be authorized to pay the following:
 - (a) All expenses incident to said sale including without limitation thereto the recording charges, escrow fees, title fees, internal revenue stamps.
 - (b) All expenses incurred by petitioner in the matter of removing all storage tanks, power poles, oil lines, sumps, steam lines and concrete walls mentioned in the offer hereinbefore set forth.
 - (c) All other expenses incident to the consummation of said sale pursuant to said offer.
7. For such other and further relief as may be proper.

H. F. METCALF

As Trustee in Bankruptcy of F. P. Newport
Corporation, Ltd., Petitioner

BAILIE, TURNER & LAKE

By Allen T. Lynch

Attorneys for Said Trustee [12]

[Verified.]

[Endorsed]: Filed Oct. 27, 1947. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith,
Clerk. [13]

[Title of District Court and Cause]

OBJECTIONS OF CREDITORS AND OF THE
BANKRUPT TO PROPOSED SALE OF REAL
PROPERTY

.

Now come Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport and Eugene P. Clark, creditors of the above named bankrupt corporation, whose claims are on file herein, and F. P. Newport Corporation, Ltd., a corporation, the above-named bankrupt, and object to the petition of H. F. Metcalf, as trustee in the above entitled matter filed herein on or about October 27, 1947, entitled "Petition for Authority to Sell and for Confirmation of Sale of Real Property to the Proctor & Gamble Manufacturing Co., a corporation," and to the granting of any of the authorizations, orders, or relief prayed for thereunder and as grounds of objection, allege:

I.

That the lands described in said petition have a fair market value in the sum of Four Hundred Thousand Dollars (\$400,000.00) and the offer received by the said trustee in the sum of \$198,000.00 as reported in said petition, is an entirely inadequate price being less than one-half of the present fair market value of said [14] lands.

II.

That said lands were appraised, by a thoroughly competent appraiser, about a year ago, who rendered his report to the above named bankrupt herein, in furtherance of the reorganization plans of said bankrupt, wherein he

stated that said lands had a fair market value in the sum of \$391,386.60.

That your objectors are informed and believe and for such reasons allege that because of the tremendous development program by the City of Long Beach, now under way in reference to its harbor, and for other well known reasons, that the fair market value of said lands has increased since said appraisal was made.

III.

That the condition set forth in subparagraph "(b)" of paragraph "4" of said petition, that the trustee shall convey to the buyer "all minerals, oil, gas and other hydrocarbon substances, in or produced upon said lands," reserving only to the trustee the rents or royalties under the present lease with Universal Consolidated Oil Company, is not only inequitable and unjust and highly dangerous in a business sense as to the trustee, but will, as your objectors are informed and believe and for such reasons allege, operate to the detriment of the within estate and to their rights therein by causing a loss to the estate which may exceed in amount the total purchase price of \$198,000.00 offered by the proposed purchaser, and in this regard objectors specify as follows:

- (a) That your objectors have been informed by thoroughly competent authorities, and they believe and for such reasons allege that because of the difference in value to royalty buyers between minerals, in places owned by the seller, and rents and royalties under a lease, that the value of the estate herein of its interest in the oil and gas yet to be [15] recovered from said lands, will drop fifty per cent (50%) immediately upon the transfer of

said lands under said condition, and that said depreciation will take place solely because of said condition;

- (b) That in addition the within estate, under said condition, and notwithstanding said reservation will be in grave danger of taking an equally great loss by being deprived in the future of all rents and royalties, now being received by said trustee, through his present lease with the Universal Consolidated Oil Company. The reason is obvious. Universal Consolidated Oil Company has the right to abandon its lease with the trustee at any time by quitclaiming the demised premises to said trustee, or otherwise.

If that were done today the trustee has a perfect legal right to lease said lands to other oil companies. It is common knowledge that in the Los Angeles Basin lands are frequently leased profitably after the original lessee-producer has abandoned his lease. The trustee would also have the right, following such abandonment or quitclaiming to enter upon the said lands and produce the wells now located thereon taking the entire production to himself.

Both of said rights will be immediately lost to the trustee because of said condition.

It is equally obvious, that the proposed purchaser could under said condition, with perfect legal right, approach said Universal Consolidated Oil Company the day after the proposed purchaser acquired title, as proposed, and offer to said Oil Company, any sum from one dollar to a million dollars that it

thought said Oil Company would accept, as an inducement to abandon its lease or [16] to quit-claim said described lands.

And the day after that happened the purchaser could lease the same lands with perfect legal right to Universal Consolidated Oil, or to any other person, and the trustee would not only no longer have any interest in the oil and gas produced from said lands or the rents or royalties therefrom, but he would have no right to complain of any such transaction, because under said condition he not only leaves himself "wide open" to the happening of such a transaction but, even though unintentionally, he almost invites it.

III.

That your objectors are informed and believe and for such reasons allege that underlying the oil sands now being produced upon said lands by Universal Consolidated Oil Company, are two additional oil sands that can be produced profitably, at least as to a part of said lands.

That said lower oil sands are known as "The Ford Zone" and "The 237 Zone." Both of those zones are now being produced profitably on adjacent and adjoining lands from wells that are as to one at least, but a few hundred feet from wells now on the lands proposed to be sold under said condition.

That Universal Consolidated Oil Company has not produced from either of said lower zones and may or may not be interested in producing therefrom. Your objectors are informed and believe and for such reasons allege that under now existing conditions the said trustee has the right to produce from said lower sands, either through his own

operations, or by contract with other oil companies, in the event that Universal Consolidated Oil Company should:

1. Elect not to produce from said lower sands; or
2. Quitclaim said lands; or
3. Abandon its said lease. [17]

The trustee's right to so produce upon the happening of any or all of said events is, however, one that no longer exists ipso facto with the transfer as proposed of the title to said land under said condition.

Your objectors are informed and believe and for such reasons allege that the loss to the said trustee and to the within estate thereby could also be a sum greater than the total purchase price offered of \$198,000.00.

That your objectors are informed and believe and for such reasons allege that said trustee has received and banked one million two hundred thirty-one thousand, nine hundred one dollars and eighty seven cents (\$1,231,901.87) from royalties, cash bonus and oil bonus under said lease with Universal Consolidated Oil Company, which covers the approximate six (6) acres of ground now proposed to be sold and an adjacent three (3) acre parcel; and that the six acre parcel now proposed to be sold for \$198,000.00 together with "all minerals, oil, gas and other hydrocarbons substances in or produced upon said land --" (subject to the lease reservation), has produced oil and gas which has been sold for one million, three hundred forty-one thousand, three hundred sixty-three dollars and four cents (\$1,341,363.04) of which sum the said trustee has been paid exclusive of a \$25,000.00 cash bonus, under the lease on all of said lands, and under a \$25,000.00 bonus, in oil under the lease on all of said lands, the sum of four hundred sixty-nine thousand four hundred seventy-seven dollars and six cents (\$469,477.06).

IV.

That said proposed offer of \$198,000.00 is not in reality an offer in that sum for as set forth in subparagraph “(d)” of said paragraph “4” the proposed purchaser attaches still another condition to his offer and that is that the trustee shall pay all costs of moving “all storage tanks, power poles, oil lines, sumps, steam [18] lines and concrete walls” (one concrete wall excepted) now located on said lands.

That, in the opinion of your objectors this is an operation that said trustee should in no event engage in. It is apparent that if the trustee, while engaged in such operation, should cause loss of life, or damage to property through explosion, fire, flooding or for any other cause that the within estate might be held liable in damages in very great sums of money.

In paragraph “5” of said petition the trustee states that he believes that the cost of removal can be limited to between \$15,000 and \$16,000. There is no assurance, however, that the estate will not actually pay out double or treble those sums. Your objectors are informed and believe and for such reasons allege that the said trustee has until very recently estimated the cost of such removal at approximately \$33,000.00.

V.

That said proposed sale is not to the best interest of the within estate or to the creditors thereof for the following additional reasons:

- (a) That after the trustee shall deduct from said \$198,000.00 the cost of removal of said tanks and equipment, and the commissions (if any) and the expenses of sale, and the Federal and State Income

Taxes, necessarily arising from such sale which taxes cannot be definitely determined at this time because of the uncertainty as to the actual cost of removal of said tanks, and equipment, but which are substantial, the net sum remaining will be so small that the loss of this valuable six acres of waterfront property, coupled with the possible loss of all of the oil yet to be produced therefrom, will be entirely without justification; [19]

- (b) That the Debtor's ability to rehabilitate himself by a plan of reorganization, now under way with the aid and co-operation of a number of his important creditors, will in no way be aided by such an insignificant sum of money but will on the contrary be delayed and possibly defeated as shown in the next succeeding paragraph;
- (c) That if hereafter the said trustee as Lessor and Universal Consolidated Oil Company as Lessee desired to extend the term of said lease or to modify said lease for their mutual gain and advantage they would be totally unable to do so without the consent of said proposed purchaser, and it should be self-evident that such consent would be withheld. The legal question that arises under such consideration has possibly been decided in an oil and gas case by the Supreme Court of Oklahoma and the precise question has recently been placed before the California Supreme Court, which Court has referred the matter to the District Court of Appeal for the Fourth District for decision.

VI.

That the bankrupt above named has for a number of months been working upon a plan of reorganization where-

by the within estate which has been operated in bankruptcy will be removed from bankruptcy, with the consent of all interested parties, and thereafter conducted by its officers. In furtherance of such plan the said bankrupt has negotiated with financial institutions for a loan in the sum of four hundred thousand dollars (\$400,000.00) which loan would be secured by a [20] first lien upon all of the remaining assets of said bankrupt, including the said six acres of waterfront property now proposed to be sold by said trustee, and, in addition has sought a seventy-five thousand dollars (\$75,000.00) six months credit which would enable it to develop a new subdivision upon the lands of the within estate near Verdugo Woodlands.

That your objectors, other than the said bankrupt, are informed and believe and for such reasons allege that the said bankrupt has been successful in negotiating said \$75,000.00 credit and an agreement with a responsible financial organization for a first lien loan in the sum of \$400,000.00 and that in furtherance of said plan the properties of the within estate have been appraised, including said six (6) acres of waterfront property, and that because of the high value placed upon said parcel through said appraisal and for other reasons that said loan cannot be made if said six acre parcel and the mineral rights thereunder are excluded from the security offered.

That the interests of the creditors herein, and of the bankrupt, will be best served by aiding the bankrupt to complete his plan of reorganization and rehabilitation, and in the opinion of the objecting creditors herein, the pro-

posed sales of said six acres of waterfront property, at said totally inadequate price and under the objectionable conditions set forth by the proposed buyer, can accomplish nothing except to delay or possibly defeat said plan, the net result of which could well be that these, and all other creditors, after years of patient waiting and of cooperation, would ultimately make no recovery.

Dated: November 11, 1947.

MRS. F. P. NEWPORT
MRS. MATHILDA OLSEN [21]
FAYE MacMILLEN PENDER

Attorney in Fact for Mrs. M. T. MacMillan

WILLIAM H. NEBLETT

By Henry Sruvi

Attorney

MRS. F. P. NEWPORT
EUGENE P. CLARK
F. P. NEWPORT CORPORATION, LTD.

By F. P. Newport

President

L. M. CAHILL

Attorney for Objectors

[Verified.] [22]

Received copy of the within Objections this 13 day of November, 1947. Bailie, Turner & Lake, Allen T. Lynch, Attorneys for Appellee and Petitioner.

[Endorsed]: Filed Nov. 13, 1947. Hugh L. Dickson, Referee.

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith, Clerk. [23]

[Title of District Court and Cause]

OBJECTIONS OF RUBY E. NEBLETT TO PROPOSED SALE OF PROPERTY OF BANKRUPT TO PROCTOR & GAMBLE COMPANY

To the District Court of the United States for the Southern District of California, Central Division:

Now comes Ruby E. Neblett and represents as follows:

That she is the equitable owner of certain corporate stock of the Bankrupt and hereby objects to the proposed sale of the area of land containing approximately six (6) acres and located at Wilmington, California, to the Proctor & Gamble Company upon the following grounds:

1. Your objector incorporates as though fully set forth herein, those certain grounds set forth in *objects* filed herein by Dorothy Day and others.

2. The record does not indicate that a sufficient public advertisement of the sale of the property has been made to enlist the interest of proposed buyers able and willing to purchase land of the character proposed to be sold.

3. The contemplated sale price of the property does not appear to be its fair market value in view of the statement of the Trustees herein, made by written communication to the referee herein, [24] dated July 2, 1947, to the effect that the Trustee was asking \$374,000.00 for the Wilmington property.

4. The terms of the sale, in imposing upon the Trustee the obligation to remove the obstruction upon the property, would create a possible liability for damages incurred in the operation and doubt may exist as to the extent of the power of the Trustee to engage in such operation.

Dated: This 12th day of November, 1947.

Respectfully submitted,

RUBY E. NEBLETT

ROSCOE R. HESS

Attorney for Objector [25]

[Verified.]

[Endorsed]: Filed Nov. 13, 1947. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith,
Clerk. [26]

[Title of District Court and Cause]

MEMORANDUM IN SUPPORT OF PETITION FOR
AUTHORITY TO SELL AND FOR CONFIRMA-
TION OF SALE OF REAL PROPERTY TO THE
PROCTOR AND GAMBLE MANUFACTURING
COMPANY, A CORPORATION

Comes now the Security-First National Bank of Los Angeles and submits the following memorandum and alleges:

I.

That petitioner is a secured creditor of the bankrupt estate, holding the real property the subject of the proposed sale and other assets under a trust declaration, executed by the bankrupt as security for the payment of the bankrupt's obligation to petitioner.

II.

That in 1935 the bankrupt was in default in the payment of its obligation to petitioner and petitioner in-

stituted proceedings to foreclose the security held by it under its trust declaration. On March 27, 1935, a petition for involuntary bankruptcy was filed against the bankrupt corporation and as a result thereof, petitioner was enjoined from prosecuting its foreclosure proceedings. On January 12, 1937, the bankrupt corporation was [27] indebted to the petitioner in the sum of One Million, Three Hundred and Fifty-one Thousand, Seven Hundred and Twenty-nine Dollars and Thirty-eight Cents (\$1,351,729.38) and that on said date, a written agreement was entered into between the bankrupt corporation, H. F. Metcalf, its receiver, and petitioner, whereby petitioner waived its right to collect Eighty-one Thousand, Two Hundred and Seventy-eight Dollars and Twenty-six Cents (\$81,278.26) of bankrupt's obligation to petitioner, and petitioner reduced its rate of interest from six (6%) per cent to four (4%) per cent on the unpaid principal balance, and the bankrupt corporation and H. F. Metcalf, its receiver, agreed that the assets of the bankrupt would be liquidated and all of petitioner's obligation paid in full by March 1, 1940, or that the bankrupt and the said receiver would not seek to enjoin nor delay foreclosure of the assets held by petitioner as security for the payment of its obligation. That said agreement and its supplement were signed by the bankrupt corporation, by F. P. Newport, its President, and by H. F. Metcalf as receiver and as Trustee in bankruptcy for the creditors of said bankrupt. That on August 13, 1937 this Court by written order approved said agreement. That there is now due, owing and unpaid to petitioner on said obligation, a principal balance of Three Hundred and Twenty Thousand, Two Hundred and Twenty-two Dollars and Eighty-five Cents (\$320,222.85). That since January 1, 1946, petitioner has received on account of principal only the sum of Eighty-

three Thousand, Four Hundred and Eighty-five Dollars and Fifty-eight Cents (\$83,485.58), of which sum Thirty-seven Thousand, Two Hundred and Fifty-three Dollars and Thirty-eight Cents (\$37,253.38) was received from the oil payments from the Universal Consolidated Oil Company. That only the sum of Forty-six Thousand, Two Hundred and Thirty-two Dollars and Twenty Cents (\$46,232.20) has been received by petitioner from liquidation of assets since January 1, 1946. [28]

III.

That this bankruptcy proceedings has been pending for a period in excess of twelve (12) years and that on numerous occasions, the referee in charge of the proceedings has stated that the assets should be liquidated and the bankruptcy proceedings terminated. That in 1943 your petitioner made a motion before Referee Ernest R. Utley for permission to foreclose on its trust declaration and the said referee, in refusing to grant permission for said foreclosure, stated at the hearing on said petition, held on June 20, 1944, that he would grant the trustee a limited period of time in which to liquidate the assets and stated that that period of time should not exceed one year. That in spite of said instruction from the said referee, and the January 12, 1937 agreement of the bankrupt corporation and the trustee in bankruptcy and the August 13, 1937 order of this Court approving said agreement, this bankruptcy proceedings has been continued and the attempt to liquidate the assets has been opposed and delayed by the bankrupt corporation, its officers and stockholders and some of its unsecured creditors.

IV.

That on numerous occasions, when this Court has had petitions before it to confirm the sale of assets or for per-

mission to foreclose the trust declaration, representations have been made to this Court by the bankrupt corporation through its officers that refinancing programs were in progress; that in spite of said representations, never during the bankruptcy proceedings, lasting in excess of twelve (12) years has a refinancing program been submitted to this Court or the creditors of the bankrupt estate.

V.

That petitioner is informed and believes and therefore alleges that recently the Universal Consolidated Oil Company drilled an oil well located on the property the subject of the [29] proposed sale, into the so-called Ford zone oil sands and that said well was unsuccessful.

VI.

That One Hundred and Ninety-eight Thousand (\$198,000.00) Dollars is a reasonable price for the property offered for sale and the fair market value of said property is not in excess of said sum.

Wherefore, petitioner prays:

1. That the petition for authority to sell and confirmation of sale of real property to Proctor and Gamble Manufacturing Company be approved; and
2. For such further relief as is equitable.

SECURITY-FIRST NATIONAL BANK
OF LOS ANGELES

By Paul E. Iverson

Attorney for Security-First National Bank
of Los Angeles [30]

[Verified.]

[Endorsed]: Filed Nov. 24, 1947. Hugh L. Dickson,
Referee.

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith,
Clerk. [31]

[Title of District Court and Cause]

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

Be It Remembered, that heretofore and on or about the 27th day of October, 1947, the trustee in bankruptcy herein, filed with this court his petition for authority to sell, and for confirmation of sale of certain real property in said petition, and hereinafter described; that said petition came on regularly for hearing before this court, pursuant to notice duly given as required by law, on the 13th day of November, 1947, at the hour of 10:00 o'clock A. M. of said day, and was thereupon duly continued until the 21st day of November, 1947, at the same hour and place, and on said last mentioned date, said matter came on regularly for hearing and was thereupon continued until the 24th day of November, 1947, at the same hour and place; that on the last mentioned date, said matter came on regularly for hearing before this court at the hour of 10:00 o'clock A. M., Messrs. Bailie, Turner and Lake, by Allen T. Lynch, appearing as attorneys for petitioner, trustee in bankruptcy herein; Paul E. Iverson, Esq. appearing as attorney for the [32] Security-First National Bank of Los Angeles, a secured creditor; Edmund Nelson, Esq., appearing as attorney for the Bank of America, a secured and unsecured creditor herein; L. M. Cahill, Esq. appearing as attorney for Dorthy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport and Eugene P. Clark, each of whom has filed a claim as an unsecured creditor of said estate, and F. P. Newport Corporation, Ltd., the bankrupt corporation; Roscoe R. Hess, Esq. appearing as attorney for Ruby E. Neblett, alleged equitable owner of certain stock of the bankrupt corporation; O'Melveny and Myers, by Richard C. Ber-

gen, appearing as attorneys for the Procter & Gamble Manufacturing Co., and written objections to said sale having been filed for and in behalf of said Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport, Eugene P. Clark, F. P. Newport Corporation, Ltd., and Ruby E. Neblett, and Bank of America having, in open court, joined in said written objections, and upon said date and from time to time thereafter until the conclusion of said hearing, evidence having been offered and received for and against said sale, and certain stipulations having been made in open court, and the court having considered said evidence and said stipulations, and the argument of counsel, and being fully advised in the premises,

FINDS

1. That the matters and things alleged in paragraphs 1 to 4, both inclusive, of the said petition for authority to sell, filed herein by the trustee in bankruptcy, are and each of them is true.

2. That in addition to agreeing to purchase said property, subject to the terms of the Universal Consolidated Oil Company gas lease referred to in said written offer, the Procter & Gamble Manufacturing Co. further offered in open court to purchase said property at said price, subject to all easements, restrictions and rights of way and restrictions of record, if any, and subject to the [33] terms, conditions and provisions of that certain contract relating to said property, made and entered into by and between said trustee in bankruptcy, F. P. Newport Corporation, Ltd., Security-First National Bank of Los Angeles and Universal Consolidated Oil Company, as parties of the first part, and City of Long Beach, a municipal corporation, and its Board of Harbor Commissioners, as

parties of the second part, a copy of which contract is attached to and made a part of the petition filed in these proceedings by said trustee in bankruptcy on the 12th day of December, 1940, and entitled "Petition for Order Authorizing H. F. Metcalf, as Trustee to Execute Certain Agreements with the City of Long Beach, et al."

3. That the work required to be done by the trustee in bankruptcy, in order to make available a certain portion of the surface of said property for the use of the Procter & Gamble Manufacturing Co., as required by its offer, can be performed at a cost to this estate of approximately \$20,378.00.

4. That the matters and things alleged in paragraphs 6, 7, 8 and 9 of the trustee's said petition for authority to sell, hereinbefore referred to, are and each of them is true.

5. That the said property was duly appraised by Thomas Cunningham, appointed by this court for said purpose, at \$211,462.00.

6. That due and proper notice of the hearing of said petition, so filed by the trustee in bankruptcy, has been given.

7. That the said trustee in bankruptcy has advertised said property for sale in newspapers of general circulation, and by informing many real estate brokers, dealing in similar properties, of his desire, as such trustee, to sell said property, and has solicited them to secure offers therefor.

8. That said trustee in bankruptcy offered said property in open court for sale to the highest and best bidder, and that the said offer so bid and so made by the Procter & Gamble Manufacturing Co., is the best offer or bid made

for said property, and is [34] the best offer or bid received by said trustee in bankruptcy therefor.

9. That said F. P. Newport Corporation, Ltd. was adjudicated a bankrupt on January 12, 1937, and said offer or bid so made is the best firm offer or bid received for said property since said date.

10. That the Security-First National Bank of Los Angeles has approved the sale of said property at said price, and subject to said conditions, and has filed a written memorandum recommending said sale.

11. That Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport, Eugene P. Clark and Bank of America have filed, in the bankruptcy proceedings herein, unsecured claims against the bankrupt corporation in the approximate sum of \$140,000.00, which is approximately 70% of the unsecured claims so filed in this proceeding.

12. That it is not now known whether or not oil and gas could or can be produced in commercially profitable quantities from any undeveloped strata or zones, which may underlie said real property.

13. That no plan of re-organization of this bankrupt has been submitted to the creditors of this estate, or to the court.

14. That a loan of \$500,000.00 would not be sufficient to pay the creditors of this estate, and the expense of administration.

15. That the objections, and each of them, made to said sale are without merit.

16. That Joseph Sattler, Esq., a duly licensed real estate broker, has performed services as a broker in producing said bidder, and is entitled to a commission for

his services in that respect, and the sum of \$5,000.00 is a reasonable sum to be paid to him as commission for his said services. [35]

As Conclusions of Law From the Foregoing Findings of Fact, the Court Concludes That,

1. That the offer so made, as hereinbefore found by the Procter & Gamble Manufacturing Co., is fair and adequate and represents the reasonable market value of said property, and is the best offer received for said property.

2. That the trustee in bankruptcy has been diligent in his efforts to sell said property, and the advertising and effort made by him in that respect, have been sufficient and adequate to enlist the interest of proposed buyers, able and willing to purchase.

3. That the sale of said property to the Procter & Gamble Manufacturing Co., at the price and upon the terms and conditions hereinbefore filed, is to the best interests of this estate and the creditors thereof, and should be confirmed.

4. That the objections made to said sale, hereinbefore filed, are without merit and should be overruled and denied.

Therefore, in accordance with the foregoing Findings of Fact and Conclusions of Law, It Is Ordered:

1. That H. F. Metcalf, as trustee in bankruptcy herein, be and he is hereby authorized to sell that certain real property being a portion of the Rancho Los Cerritos situate in the City of Long Beach, County of Los Angeles,

State of California, and more particularly described as follows:

Beginning at the most Southeasterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577, Page 105 of Deeds, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed, North $19^{\circ} 42' 30''$ East 738.08 feet; thence North $64^{\circ} 42' 30''$ East 500 feet; thence [36] South $19^{\circ} 42' 30''$ West 738.08 feet to a point in said Northwesterly line of Channel No. 3; thence along said Northwesterly line South $64^{\circ} 42' 30''$ West 500 feet to the point of beginning.

together with all minerals, oil, gas and other hydrocarbon substances in, on or produced from said land, But Reserving and Excepting, However, unto Security-First National Bank of Los Angeles, and H. F. Metcalf, as trustee in bankruptcy of the above entitled bankrupt estate, as their interests may appear, and to their assigns and successors, all rents, royalties and other things of value accruing pursuant to or by virtue of (and prior to the expiration, surrender or other termination thereof) that certain oil and gas lease dated January 14, 1938, and entered into by and between said trustee in bankruptcy and said Security-First National Bank of Los Angeles, and others, as lessors, and the Universal Consolidated Oil Company, as lessee, and recorded in the office of the County Recorder of the County of Los Angeles, in Book 15515, Page 326, Official Records of said county; and subject to the following, to-wit:

(a) All restrictions, reservations, easements and rights of way of record, if any.

(b) The terms, conditions and provisions of that certain contract relating to said property and made and entered into by and between said trustee in bankruptcy, F. P. Newport Corporation, Ltd., Security-First National Bank of Los Angeles and Universal Consolidated Oil Company, as parties of the first part, and City of Long Beach, a municipal corporation, and its Board of Harbor Commissioners, as parties of the second part, copy of which contract is attached to and made a part of the petition filed in these proceedings by said [37] trustee in bankruptcy, on the 12th day of December, 1940, and entitled "Petition for Order Authorizing H. F. Metcalf, as Trustee, to Execute Certain Agreements with the City of Long Beach, et al."

(c) The last half of 1947 and 1948 taxes.

2. That the sale of said real property, subject to said reservations, conditions, easements, restrictions and taxes, as hereinbefore noted, to the Procter & Gamble Manufacturing Co., a corporation, for the sum of \$198,000.00, be and it is hereby confirmed, subject, however, to the following additional conditions:

(a) That the said trustee in bankruptcy procure a letter addressed to the Procter & Gamble Manufacturing Co., and executed by the Universal Consolidated Oil Company, per its officers thereunto duly authorized, and in form approved by counsel for the Procter & Gamble Manufacturing Co., which letter shall, by its terms, grant permission to said purchaser

to use a portion of the land as a baseball park and parking area, the land to be so used, being designated and described in map which is trustee's Exhibit "1" in this proceeding.

(b) That the trustee in bankruptcy shall cause to be removed, at the expense of this estate, all construction on that portion of the land outlined on said map hereinbefore mentioned, including, but without limiting the generality of the foregoing, all storage tanks, power poles, oil lines, sumps, steam lines and concrete walls (excepting the wall located on easterly boundary of said land).

(c) That this order confirming and approving this sale shall become final within Sixty (60) days [38] from October 27, 1947, provided, however, that the purchaser may waive this condition in its discretion.

3. The trustee in bankruptcy herein is hereby authorized to make and enter into such contracts as may be necessary and proper to consummate this sale in accordance with the foregoing conditions, and to secure such liability policy or policies as he may deem necessary in connection with any contract or contracts so made.

4. That the trustee in bankruptcy be and he is hereby authorized to pay out of the proceeds of said sale, when and as received by him, the following:

(a) All expenses incident to the performance by him of such conditions of said sale as are requested to be performed by him.

(b) The sum of \$5,000.00 to Joseph Sattler, Esq., a duly licensed real estate broker, costs of policy title insurance, escrow fees, internal revenue stamps, recording charges, and any and all other expenses incident to said sale.

(c) The balance of the proceeds of said sale, when and as received by him, trustee shall pay to the Security-First National Bank of Los Angeles; payment of such remainder of the balance to said bank is directed by the court, without determination at this time of the question of whether or not such remaining funds, or any part thereof, may be used for the payment of other costs of sale or expenses of administration, this court hereby reserving jurisdiction to determine that question at a future date. In the event this court shall determine, and such decision shall become final, that said remaining [39] funds can or could have been used for payment of any other costs or expenses of administration, then, in that event, the court reserves jurisdiction to direct payment thereof out of any other funds that may come into the possession and/or control of the trustee in bankruptcy herein.

5. That the monies directed to be paid herein to Security-First National Bank of Los Angeles shall be applied by it in accordance with the agreement of January

12, 1937, supplement thereto and modifications thereof, referred to in the trustee's said petition.

6. Trustee in bankruptcy shall pay out of the assets of this estate, from time to time, as they may become due and payable, all taxes relating to the oil, gas or hydrocarbon substances in, on or under said land, and which shall be assessed and become payable prior to the expiration, surrender or other termination of said lease of January 14, 1938, made and entered into by and between said trustee in bankruptcy and others, as lessors, and Universal Consolidated Oil Company, as lessee, and hereinbefore referred to.

Dated this 19 day of December, 1947.

HUGH L. DICKSON

Referee in Bankruptcy

Approved as to form: Paul E. Iverson, Attorney for Security-First National Bank of Los Angeles. Edmund Nelson, Attorney for Bank of America. L. M. Cahill, Attorney for Certain Creditors and the Bankrupt. Roscoe R. Hess, Attorney for Ruby E. Neblett. O'Melveny and Myers, By Richard C. Bergen, Attorneys for Procter & Gamble Manufacturing Co.

[Endorsed]: Filed Dec. 11, 1947. Hugh L. Dickson, Referee.

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith, Clerk. [40]

[Title of District Court and Cause]

PETITION TO REVIEW REFEREE'S ORDER

To Honorable Hugh L. Dickson, Referee in Bankruptcy:

Your petitioners respectfully show:

I.

That they are the above named bankrupt and certain creditors of F. P. Newport Corporation, Ltd., a corporation, the above named bankrupt, whose claims have been allowed herein.

II.

That in the course of the proceedings herein the trustee on or about October 27, 1947, filed his petition herein for an order authorizing the sale of certain real property of the bankrupt estate for \$198,000 less the cost of removing certain oil well equipment to Procter and Gamble Manufacturing Company. That said property consists of six acres of land located on Channel No. 3 in the Long Beach Harbor having 500 feet of frontage on said channel upon which are producing oil wells. [41]

III.

That thereafter and on or about November 12, 1947, written objections were filed to said proposed sale by creditors Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport and Eugene P. Clark and by the bankrupt, separate written objections were filed thereto, on or about said day by Ruby E. Neblett.

IV.

That on or about November 13, 1947, a hearing was held before said referee, upon said matter, at which time

Bank of America National Trust and Savings Association, a creditor of said bankrupt, appeared and joined in the written objections set forth upon behalf of said creditors and the bankrupt.

V.

That the said written objections of Ruby E. Neblett after incorporating by reference the said written objections of Dorothy Day and others, set forth the following:

- "2. That the record does not indicate that a sufficient public advertisement of the sale of the property has been made to enlist the interest of proposed buyers able and willing to purchase land of the character proposed to be sold.
- "3. The contemplated sales price of the property does not appear to be its fair market value in view of the statement of the Trustee herein, made by written communication to the referee herein dated July 2, 1947 to the effect that the Trustee was asking \$374,000 for the Wilmington property.
- "4. That the terms of the sale, in imposing upon the Trustee the obligation to remove the obstruction upon the property, would create a possible liability for damages incurred in the operation and doubt may exist [42] as to the extent of the Power of the Trustee to engage in such operation."

V.

That the written objections of Dorothy Day and other creditors alleged that the said six acres had been appraised as having a fair market value in the sum of \$391,386.60, as of about a year ago and that the value had since increased, and after objecting to the sale at a price of \$198,000 less \$15,000 or \$16,000 to be paid for the re-

moval of oil well equipment set forth the following objection:

“That the condition set forth in subparagraph ‘(b)’ of paragraph ‘4’ of said petition, that the trustee shall convey to the buyer ‘all minerals, oil, gas and other hydrocarbon substances, in or produced upon said lands,’ reserving only to the trustee the rents or royalties under the present lease with Universal Consolidated Oil Company, is not only inequitable and unjust and highly dangerous in a business sense as to the trustee, but will, as your objectors are informed and believe and for such reasons allege, operate to the detriment of the within estate and to their rights therein by causing a loss to the estate which may exceed in amount the total purchase price of \$198,000.00 offered by the proposed purchaser, and in this regard objectors specify as follows:

- (a) That your objectors have been informed by thoroughly competent authorities, and they believe and for such reasons allege that because of the difference in value to royalty buyers between minerals, in places owned by the seller, and rents and royalties under a lease, that the value of the estate herein of its interest in the oil and gas yet to be recovered from said lands, will drop fifty percent (50%) immediately upon the transfer of said lands under said condition, and that said [43] depreciation will take place solely because of said condition;
- (b) That in addition the within estate, under said condition, and notwithstanding said reservation will be in grave danger of taking an equally great loss by being deprived in the future of all rents and royalties, now being received by said trustee, through his present lease with the Universal Con-

solidated Oil Company. The reason is obvious. Universal Consolidated Oil Company has the right to abandon its lease with the trustee at any time by quitclaiming the demised premises to said trustee, or otherwise.

If that were done today the trustee has a perfect legal right to lease said lands to other oil companies. It is common knowledge that in the Los Angeles Basin lands are frequently re-leased profitably after the original lessee-producer has abandoned his lease. The trustee would also have the right, following such abandonment or quitclaiming to enter upon the said lands and produce the wells now located thereon taking the entire production to himself.

Both of said rights will be immediately lost to the trustee because of said condition.

It is equally obvious, that the proposed purchaser could under said condition, with perfect legal right approach said Universal Consolidated Oil Company the day after the proposed purchase acquired title, as proposed, and offer to said Oil Company, any sum from one dollar to a million dollars that it thought said Oil Company would accept, as an [44] inducement to abandon its lease or to quitclaim said described lands.

And the day after that happened the purchaser could re-lease the same lands with perfect legal right to Universal Consolidated Oil Company, or to any other person, and the trustee would not only no longer have any interest in the oil and gas produced from said lands or the rents or royalties

therefrom, but he would have no right to complain of any such transaction, because under said condition he not only leaves himself 'wide open' to the happening of such a transaction but, even though unintentionally, he almost invites it."

VI.

Said written objections of Dorothy Day and others also objected to said sale upon the ground that two lower oil sands known as "The Ford Zone" and "The 237 Zone," which are producing profitably on adjacent lands had not been developed, as yet, upon said six acres and that under present conditions the Trustee herein could produce from said sands if the present lessee elected not to produce therefrom, or quitclaimed said lands, or abandoned its lease; but that this valuable right would be lost to the Trustee under the terms of the proposed sale; and that in the light of the fact that said six acre parcel and an adjoining three acre parcel had produced oil royalties to date, which had been received by said trustee in the sum of \$1,231,901.87 and that said six-acre parcel, alone, had produced oil to date of a total value of \$1,341,363.04; it would appear that it was very unwise to consummate said sale, because of the terms of said sale as demanded by the proposed purchaser, under which a loss might be suffered by the within Estate in a sum far in excess of the proposed total purchase price of \$198,000. [45]

VII.

Other objections set forth therein had to do with the lack of assurance that the obligation to be assumed by the trustee for the removal of said oil well equipment might not be double the estimated \$15,000 stated in his petition, and, that the small sum left after deducting whatever the

cost of such removal was from \$198,000 and the payment of income taxes from the profit from such sale from the remainder, would not only do the estate very little good, but would defeat the reorganization plan of the debtor which is predicated upon a loan committed in the sum of \$400,000, which loan required the security of the assets of the bankrupt including said six acre parcel.

VIII.

Hearings having been held upon said petition and said objections on November 13, 1947, and on various days thereafter, and expert witness having been called and having testified as to the present fair market value of the said land, and as to the oil thereon, and as to the practical and legal effect of the said sale under the terms proposed by the buyer, as to the transfer of the mineral rights and the matter having been submitted for decision; the Referee did on December 19, 1947, make his order which was thereupon entered herein. That a copy of said order is hereto annexed, marked "Exhibit A" and made a part hereof as if fully set forth at this place.

IX.

That said order was and is erroneous in that:

- (a) It, in effect, overrules and denies all of the said objections, notwithstanding that the evidence presented and received in support of said objections not only fully supported and sustained said objections, but was practically uncontradicted as to all matters set forth in said objections with the single exception of the [46] question of present fair market value;

- (b) That it authorizes the sale by the Trustee, over the written objections of possibly a great majority of the creditors, of a valuable asset of the within estate at a grossly inadequate price, believed by your petitioners to be approximately one-half of the fair market value of said six acre parcel, which belief is supported by the testimony of the Witness Higgins, who, as Chief valuation engineer, for Southern Pacific Company, placed a value of \$60,000 per acre upon said six-acre parcel, same being exactly the value his company had placed upon its adjoining lands which he held to be exactly comparable;
- (c) That it authorizes the sale upon the terms demanded by the purchaser in reference to the transfer of the mineral rights, whereby the trustee, being no longer the owner of the minerals in place, but having only a royalty interest therein expressly limited to the present lease, will become immediately subject to the possibility of immediate and complete loss of the remaining oil and gas, not only as to the present producing sands, but also as to the said productive lower sands;
- (d) That said proposed sale is unwise in this, that it changes a sound business and legal relationship now existing, as to oil and gas remaining to be recovered from said lands, into an uncertain one subject not only in a certain sense, to the whim or caprice of the present lessee, but subject also to the facts that upon any day after the sale, either for a small or large consideration paid by the proposed buyer to the present lessee, or for no consideration whatsoever so paid, the Trustee can be fully and finally

divested of all [47] remaining interest in the oil and gas from said lands, by the present lessee simply informing the Trustee that he has quitclaimed said lands, as authorized in said lease, or, that he has abandoned said lease in its entirety;

- (e) That all of the testimony as to present fair market value has been ignored but said order is predicated upon findings that notes only an appraisal made in either December 1945, or January 1946, whereas all of the testimony as to present fair market value disclosed that all lands in the Long Beach Harbor area have greatly increased in the two year period that followed said appraisal;
- (f) That the trustee admitted that he has not advertised the property for sale in any manner, except a brief notice in the Los Angeles Daily Journal, notwithstanding the fact, that when he did extensively advertise said property for sale in January 1945, in newspapers in various large cities upon both coasts, that he received, in the then not nearly so favorable market, numerous inquiries from corporations, brokers and others;
- (g) That as late as July 2, 1947, the trustee believed that a buyer could be secured for said six acre parcel in the sum of \$374,000.00, for as shown by the evidence he wrote the Referee herein, on that day, to that effect;
- (h) That as shown by the uncontradicted evidence, the trustee will be required, under the drastic terms of sale imposed by the buyer, not only to assume the risk of damage to person and property through fire, explosion, or otherwise, through the removing

of the oil tank farm equipment to lands not proposed to be sold [48] at this time but also to pay from the funds of the within Estate the minimum sum of \$20,378.00 for such removal;

- (i) That it ignores the recommendation of A. A. Carrey, who has been the petroleum geologist and engineer advising the Trustee herein, as to the oil and gas upon said lands, for a number of years; that the said lands not be sold upon the drastic terms imposed by the buyer, as to the transfer of the mineral rights, because an immediate loss will be suffered by the Estate in the depreciation of the market value of the mineral rights. The uncontradicted testimony of Mr. Carrey on this point is in part as follows:

“In my opinion that if this sale is made that the present landowner the F. P. Newport Corporation, will suffer a decided loss in the sale value of their landowner’s interest”;

- (j) That it ignores the recommendation of Mr. Carrey that the sale be not made for an entirely different reason stated by him as follows:

“I believe that the most serious effect that the sale would have upon the F. P. Newport Corporation is the matter of the termination clause in the present lease. If such a sale is made the F. P. Newport Corporation has not power to prevent the present operating company from terminating said lease, and as a result of such action the F. P. Newport Corporation could in no way continue the oil operations.”

- (k) That it directs the payment of an alleged real estate brokers commission in the sum of \$5000 to an attorney at law, who is apparently also licensed as a real estate [49] broker, notwithstanding the fact that said attorney was at no time employed by the trustee herein in any capacity,—attorney, broker, or otherwise, and that it appears from the uncontradicted testimony that said attorney and the proposed purchaser entered into an agreement, without the knowledge of the trustee, that said attorney would be paid a “finders fee.” As such this obligation would appear to be that of the party found and not the obligation of the trustee who had no agreement in writing, as required by the laws of the State of California, with any person for his employment as a broker, or otherwise or at all.

In this regard it should be noted that the trustee herein is a licensed real estate broker, who is allowed fees from time to time for his services as trustee herein, including \$3000 allowed him on December 23, 1947, for services rendered in 1947, and, that the record herein discloses that said trustee, about the month of January 1945, received an offer of purchase from the present proposed purchaser, for the same six acre parcel, in the sum of \$180,000, which offer the trustee declined, he then having a higher offer; and that thereafter said attorney-broker conferred with the Referee herein and asked if a commission would be paid him if he was successful in finding a purchaser for said land; and that the referee expressed an opinion that a commission would be paid because

of the fact that he did not recall of sales of real estate being made before him where some real estate broker was not paid a commission; and that thereupon the said attorney wrote a letter to the corporation whose offer had been so declined by the trustee herein, and finding a continuing interest [50] in the property upon its part here thereupon entered into said agreement for a "finders fee."

The practice of buyers employing agents to secure scarce merchandise, or to induce reluctant owners to sell real estate, has developed in this period of scarcity, but the fee to be paid therefor is a fee to be paid by the buyer for whom the service is rendered, and is never a burden to be imposed upon the seller. In any event such fees are not contemplated by the provisions of the National Bankruptcy Act and cannot be sustained and most certainly not under the circumstances here;

- (1) That creditors herein have received no notice whatsoever as required by law of a hearing of a petition for the allowance to said attorney-broker of either a real estate commission or a "finders fee." The petition filed by the trustee herein failed to request authority to pay any such commission or fee to any person whomsoever and the notice thereof to creditors stated only the facts set forth in said petition.

X.

That the ability to rehabilitate itself, through a plan of reorganization now being worked out, with the aid and co-operation of a number of its important creditors, will in no way be aided by the approximate sum of \$140,000

which will remain after deducting expenses of equipment removal, income taxes, as shown by the letter of Western States Life Insurance Company, received in evidence herein, through the inability of the debtor to secure the loan proposed to be made by said Company in the sum of \$400,000, with said six acre parcel, it appearing that said Company's appraisers have placed a high value upon said parcel including the mineral rights in place; which facts were clearly established by the evidence upon said hearing, but which are disregarded entirely by [51] said order.

XI.

That no findings of any kind have been made upon the principal objections set forth in said written objections, your petitioners must therefor request that a transcript be prepared to include all matters received in evidence at said hearings, with the exception of the matters received by reference.

Wherefore, your petitioners pray for a review of said order by the Judge, and that said order be vacated and set aside.

Dated, December 29, 1947.

DOROTHY DAY

MARTHA McMILLEN

MATILDA OLSEN

WILLIAM H. NEBLETT

MRS. F. P. NEWPORT and

EUGENE CLARK

By L. M. Cahill

Their Attorney

F. P. NEWPORT CORPORATION, LTD.

By F. P. Newport

President

DOROTHY DAY

FAYE MacMILLAN PENDER

Attorney in Fact for Mrs. M. T. MacMillan

WILLIAM H. NEBLETT

By Henry Sriur

Attorney

MRS. F. P. NEWPORT

EUGENE P. CLARK

L. M. CAHILL

Attorney for Objectors [52]

Note: Findings of Fact, Conclusions of Law and Order appearing at this point are a copy of the Findings of Fact, Conclusions of Law and Order appearing at pages 26 to 35 of the Transcript of Record, so are not repeated. [53]

Received copy of the within Petition to Review this 29 day of December, 1947. Bailie, Turner & Lake, Attorneys for Trustee.

Received copy of the within Petition to Review this 29th day of December, 1947. O'Melveny & Myers, by Richard Bergen, Attorneys for Procter & Gamble Mfg. Co.

Received copy of the within Petition to Review. Paul E. Iverson, per M. Gable.

[Endorsed]: Filed Dec. 29, 1947. Edmund L. Smith, Clerk. [54]

[Title of District Court and Cause]

REFEREE'S CERTIFICATE ON REVIEW

(Sale to the Procter & Gamble Manufacturing Co.)

To the Honorable Paul J. McCormick, Judge of the
United States District Court, Southern District of
California, Central Division:

I, Hugh L. Dickson, Referee in Bankruptcy, to whom
the proceedings in this matter were referred, do hereby
certify:

That on January 12, 1937, F. P. Newport Corporation,
Ltd., a corporation, was duly adjudicated a bankrupt, and
proceedings in relation to said bankrupt estate were duly
referred to this Referee.

That on March 18, 1937, H. F. Metcalf was duly
appointed Trustee in Bankruptcy of said bankrupt estate,
duly qualified as such, and ever since has been and now
is the duly appointed, qualified and acting Trustee in
Bankruptcy of said estate, and as such has been since
March 18, 1937, in possession and control of all of the
properties and assets of said bankrupt corporation.

That on October 27, 1947, the Trustee in Bankruptcy
duly filed with this Court a Petition for Authority to Sell
and [55] for Confirmation of Sale of Real Property to
the Procter & Gamble Manufacturing Co., a corporation.
(The original Petition is attached hereto and made part
hereof.)

Written Objections to said sale were duly filed for
and on behalf of certain creditors and the Bankrupt. Bank
of America, in open court, joined in said Objections and
adopted them as its Objections to said sale.

That the largest secured creditor, Security-First National Bank of Los Angeles filed a Memorandum in support of the Petition for Authority to Sell.

Said Petition and Objections came on regularly for hearing before this Court. Evidence, oral and written, was offered and received. Certain stipulations were made in open court. This Court made and signed its written Findings of Fact, Conclusions of Law and Order, authorizing and confirming the sale of said property to the Procter & Gamble Manufacturing Co. on the terms and conditions set forth in the said Order. (Original Findings of Fact, Conclusions of Law and Order is attached hereto and made part hereof.)

Thereafter a Petition to Review Referee's Order was duly filed by certain creditors, to-wit: Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport and Eugene Clark, and the Bankrupt Corporation. (Original Petition to Review is attached hereto and made part hereof.)

The questions presented for this Court to determine by the said Petition for the Sale, etc., and said Objections were as follows:

I.

Should the Trustee in Bankruptcy Be Authorized to Sell the Property Described in Said Petition, together with all minerals, oil, gas and other hydro-carbon [56] substances in, on or produced from said land, But Reserving and Excepting, However, unto Security-First National Bank of Los Angeles, and H. F. Metcalf, as Trus-

tee in Bankruptcy of the above entitled bankrupt estate, as their interests may appear, and to their assigns and successors, all rents, royalties and other things of value accruing pursuant to or by virtue of (and prior to the expiration, surrender or other termination thereof) that certain oil and gas lease dated January 14, 1938, and entered into by and between said Trustee in Bankruptcy and said Security-First National Bank of Los Angeles and others, as lessors, and the Universal Consolidated Oil Company, as lessee, and recorded in the office of the County Recorder of the County of Los Angeles, in Book 15515, Page 326, Official Records of said County; and subject to the following, to-wit:

- (a) All restrictions, reservations, easements and rights of way of record, if any.
- (b) The terms, conditions and provisions of that certain contract relating to said property and made and entered into by and between said Trustee in Bankruptcy, F. P. Newport Corporation, Ltd., Security-First National Bank of Los Angeles and Universal Consolidated Oil Company, as parties of the first part, and City of Long Beach, a municipal corporation, and its Board of Harbor Commissioners, as parties of the second part, copy of which contract is attached to and made a part of the petition filed in these proceedings by said Trustee in Bankruptcy, on the 12th day of December, 1940, and entitled "Petition for Order Authorizing H. F. Metcalf, as Trustee, to Execute Certain Agreements with the City of Long Beach, et al." [57]
- (c) The last half of 1947 and 1948 taxes.

II.

Was the Offer of \$198,000 Cash, Lawful Money of the United States Submitted by the Procter & Gamble Manufacturing Co. (Subject to the Conditions Hereinafter Noted) the Best Offer the Trustee in Bankruptcy Had Been Able to Obtain Therefor, and, Should the Sale Be Confirmed?

The conditions of said offer hereinbefore referred to are as follows:

- (a) That the said Trustee in Bankruptcy procure a letter addressed to the Procter & Gamble Manufacturing Co., and executed by the Universal Consolidated Oil Company, per its officers thereunto duly authorized, and in form approved by counsel for the Procter & Gamble Manufacturing Co., which letter shall, by its terms, grant permission to said purchaser to use a portion of the land as a baseball park and parking area, the land to be so used, being designated and described in map which is Trustee's Exhibit "1" in this proceeding.
- (b) That the Trustee in Bankruptcy shall cause to be removed, at the expense of this estate, all construction on that portion of the land outlined on said map hereinbefore mentioned, including, but without limiting the generality of the foregoing, all storage tanks, power poles, oil lines, sumps, steam lines and concrete walls (excepting the wall located on easterly boundary of said land).
- (c) That this Order Confirming and Approving this sale become final within Sixty (60) days from October 27, 1947, provided, however, that the purchaser may [58] waive this condition in its discretion.

This Court determined that the said property should be sold and that the offer so made was the best offer the Trustee in Bankruptcy had received, and that it was to the best interests of this estate that it be confirmed.

SUMMARY OF EVIDENCE

No transcript of the evidence offered and received by the Court has been prepared or submitted to the Referee. This summary is the best of the memory and recollection of the Referee.

This corporation was adjudicated a bankrupt on January 12, 1937. H. F. Metcalf was appointed Trustee in Bankruptcy on March 18, 1937, and duly qualified as such shortly thereafter.

Said Trustee in Bankruptcy has endeavored to sell the property hereinbefore mentioned ever since his qualification as such Trustee. On several occasions he advertised the property for sale in newspapers extensively, some of which newspapers include: Portland Oregonian, Chicago Tribune, Long Beach Reporter, Los Angeles Times, Los Angeles Examiner and Daily Shipping Guide, Los Angeles Daily Journal.

Said Trustee notified many business opportunity brokers and real estate brokers (whom he believed might have clients interested in the property) of his desire to sell the property Reserving his interest in the Universal Consolidated Oil Company lease. It was estimated that he notified 50 brokers in the Long Beach and Los Angeles area.

The offer made by the Procter & Gamble Manufacturing Co. as hereinbefore noted was the best firm offer received by the Trustee.

The said Trustee received an offer from a reliable contractor to perform the work required of the Trustee under the [59] terms of the offer of the Procter & Gamble Manufacturing Co. for an approximate total of \$20,-378.00.

The said property was appraised at \$211,462.00 by Thomas J. Cunningham (now a judge of the Los Angeles Superior Court) appointed by this Court to appraise the said property.

Security-First National Bank of Los Angeles has insisted and continues to insist on immediate liquidation of the properties of this estate and payment of the balance of the secured indebtedness due it.

Said Trustee in Bankruptcy is in default in payment of the indebtedness owing to said Bank as provided by the Agreement of January 12, 1937, supplement thereto and modifications thereof, which Agreement, supplement and modifications have been approved by the Honorable Paul J. McCormick by order of November 5, 1937.

Only the sum of \$46,232.20 has been received by said Bank since January 1, 1946, as the result of liquidation of the properties of this estate.

The creditors objecting to said sale represent about 70% in amount of the unsecured indebtedness of this estate.

Bank of America National Trust and Savings Association, a national banking association, in addition to being an unsecured creditor is also a secured creditor.

Mr. Higgins, Chief Valuation Engineer for Southern Pacific Company, called as a witness by the Objectors, testified: That in his opinion the property consisted of

approximately six acres, and was reasonably worth—exclusive of oil rights—\$60,000 an acre. On cross-examination, he admitted that he knew of no sale of similar property in the Long Beach Harbor area for a price in excess of \$30,000 an acre, and that, in 1944, Southern Pacific [60] Company had sold to the Procter & Gamble Manufacturing Co. 2,374 acres on Channel 2 for \$62,834.00, or approximately \$26,000 an acre. That in setting his value of \$60,000 per acre he had not considered the fact that only part of the surface of the land could be used until 1963 because of the oil wells on the property.

Mr. Johnson, who has had many years' experience in appraising lands in Southern California, called as a witness by the Objectors, testified: That the property had a fair market value of approximately \$391,000. On cross-examination he admitted that he had never appraised any water front or dock property in the Long Beach, Los Angeles or San Pedro areas before he appraised this property; that he knew of no sale of similar property in the Long Beach Harbor area for a price in excess of \$30,000 per acre. He admitted that he had read the Tom Mason report concerning this property and that he knew of no sales in the area in excess of the prices given in the said report. (The Tom Mason report is attached hereto and made part hereof.)

Mr. Meade, a geologist and a petroleum engineer, called as a witness by Objectors, testified: That in his opinion there were two undeveloped oil zones or horizons underlying this property, the Ford Zone and the 237 Zone; and that he believed wells could be drilled thereto and oil developed in commercial paying quantity. On cross-examination he admitted that the present Lessee, Universal

Consolidated Oil Company, had drilled a well into one of the said zones, to-wit, the Ford Zone, and had abandoned the well because it did not believe the well could be developed as a producer of oil in commercial paying quantity. He further testified that in his opinion the said well so drilled would have produced oil in commercial paying quantity if the Lessee had elected to [61] place it on production; and that, since Lessee had failed to run a production test, the determination of Lessee to abandon the well was not conclusive as to the productivity of said zone.

Mr. Carrey, a geologist and petroleum engineer of many years' experience (and the geologist and engineer who advised said Trustee under an Order of this Court relative to the operations of Lessee, Universal Consolidated Oil Company), testified, as a witness called by the Objectors, that in his opinion there were two undeveloped oil and gas zones underlying the said property, known as the Ford Zone and the 237 Zone; that he was not prepared to say whether or not oil could be produced from either of these zones by a well drilled on this particular property; that, in his opinion, the well drilled by said Lessee as hereinbefore mentioned, to the Ford Zone was not conclusive as to whether or not oil could be developed or produced from said zones or either of them in commercial paying quantity; that the well drilled by Universal Consolidated Oil Company into the Ford Zone was, in his opinion, drilled from the location on the property most likely to obtain production; and that, if the sale was made under said conditions, then the value of the landowners' royalty interest remaining in the Lessors would be lessened, since the sale contemplated the reservation only in the bankrupt estate of the Lessors' interest under the present

lease and, if the lease were abandoned, all right of the bankrupt estate in the minerals would cease.

Mr. Burgess, a real estate broker engaged in that business for many years in the Los Angeles area, testified: That in his opinion the property had a reasonable value of \$66,000 per acre. On cross-examination he admitted that he [62] knew of no sales of similar property in the area for a sum in excess of \$30,000 per acre.

Mr. Tom Mason. At a prior hearing in relation to a sale of this property, Mr. Mason submitted a written report of his findings regarding the value thereof and particularly listed sales in the area of similar property. The report has been previously mentioned in this summary. Mr. Mason, called as a witness for Security-First National Bank of Los Angeles, testified: That his said report contained a resume of all of the sales of real property with which he was familiar which occurred in the area; that he had again inspected this particular property; that, based on his knowledge of the property and of the sales in the area, it was his opinion the property had a reasonable value, exclusive of oil rights, of \$196,350.00; that he had been engaged as a real estate broker and had handled similar properties in the Long Beach, Wilmington and San Pedro area for more than twenty years; and that he had appraised properties in the area for various business concerns and the Courts for many years.

Mr. Follansbee, Vice President of the Universal Consolidated Oil Company, and a petroleum engineer familiar with the drilling of the well located on the property in question to the Ford Zone hereinbefore mentioned, called as a witness by the Trustee in Bankruptcy, testified: That

Universal Consolidated Oil Company had determined, after examining the electric log of the well and the cores, that oil and gas could not be produced therefrom in commercial paying quantities and had, therefore, elected to abandon the well for that zone; that they had spent many thousands of dollars in drilling the well to the zone; that, had they believed oil and gas could be produced from said well in [63] commercial paying quantity, they would have put the well on production; that the well was properly drilled; that there was no mechanical defect therein; and that, in his opinion, the 237 Zone did not underlie this property because there had been no production below the Ranger Zone on the side of the fault that this property is located.

Mr. Metcalf, Trustee in Bankruptcy, testified: That the said offer received from the Procter & Gamble Manufacturing Co. was the best firm offer he had been able to obtain and if it was this Court's desire that the property be liquidated promptly, he had no other prospect of obtaining a better offer; that he originally had placed an offering price on the property at a sum much in excess of the present selling price but had not been able to get a firm offer for any greater amount than this present one; that the property was badly eroded; and that to put the property in condition for use as a dock and warehouse it would be necessary to install a bulkhead and to fill in behind the bulkhead; and that this would cost in excess of \$50,000.00.

Mr. Russell Adams, assistant vice president of Security-First National Bank of Los Angeles, called as a witness by the said Bank, testified: That he had been in charge of this particular loan ever since the inception of the bankruptcy proceeding; that no substantial progress had

been made in the liquidation of the properties; that there was paid to the said Bank as a result of liquidation only the sum of \$46,232.20 since the first of the year 1946; that since the Trustee in Bankruptcy was in default under the terms of the Agreement of January 12, 1937, supplement thereto and modifications thereof, the said Bank would insist on a foreclosure of its loan unless the property was liquidated promptly and the Bank's loan was paid. [64]

It was testified that Mr. Joseph Sattler, a licensed real estate broker, had interested the Procter & Gamble Manufacturing Co. to submit a bid for the property. The Court concluded that, under the circumstances, Mr. Sattler was entitled to a reasonable brokerage fee which the Court determined to be \$5,000.

The Referee submits herewith the following:

1. Petition for Authority to Sell and for Confirmation of Sale of Real Property to the Procter & Gamble Manufacturing Co., a corporation.
2. Objections to Said Petition.
3. Memorandum of Security-First National Bank of Los Angeles in Support of Petition.
4. Findings of Fact, Conclusions of Law and Order, authorizing said sale and confirming said sale.
5. Petition to Review Referee's Order.
6. All Exhibits offered and received in evidence.

Dated this 28 day of Jan., 1948.

HUGH L. DICKSON

Referee in Bankruptcy

[Endorsed]: Filed Jan. 28, 1948. Edmund L. Smith, Clerk. [65]

[Minutes: Wednesday, March 11, 1948]

Present: The Honorable Charles C. Cavanah, District Judge.

For hearing (1) motion of Trustee for order affirming order of referee of Dec. 19, 1947, approving and confirming sale of certain real property to Procter & Gamble Mfg. Co.; (2) petition for review of Referee's order filed Dec. 19, 1947, by Dorothy Day, Martha McMillen, Matilda Olsen, Wm. H. Neblett, Mrs. F. P. Newport, Eugene P. Clark, and the bankrupt; L. M. Cahill, Esq., appearing as counsel for petitioners Dorothy Day, et al.; Edmund Nelson, Esq., appearing as counsel for Bank of America, Nat'l Trust & Savings Assoc., an unsecured creditor; Paul E. Iverson, Esq., appearing as counsel for Security-First Nat'l Bank of Los Angeles, a secured creditor; Allen T. Lynch, Esq., appearing as counsel for trustee; T. O. McCraney, Esq., appearing as counsel for Procter & Gamble Mfg. Co.; at 10:15 A. M. court convenes herein, and all counsel answering ready, Court orders hearing proceed.

Attorney Lynch makes a statement to the Court as to the matter before the Court. Attorney Cahill makes a statement to the Court and on his motion it is ordered that Attorney Edmund Nelson be associated with counsel for petitioners on review as counsel for petitioners.

Attorney Cahill makes a further statement to the Court and moves that the petitioners be allowed to call Mr. Metcalf, the trustee herein, to testify to matters occurring since the prior hearing before the referee re sale referred to in said petition for review.

Attorney Lynch makes a statement to the Court in answer to the Court's inquiry as to whether there are

any objections to the calling of the trustee to testify at this time, and states that there are no [66] objections thereto.

The Court makes a statement that the Court believes that it is the duty of the Court to hear further evidence as to developments since the referee confirmed the sale herein, and orders that the said trustee may be called to testify at this time, and thereupon,

H. F. Metcalf, the trustee herein, is called, sworn, and testifies on examination by Attorney Cahill, examination by the Court, and by further examination by Attorney Nelson.

Attorney Nelson makes a statement to the Court and moves that the sale be not confirmed.

And said Witness H. F. Metcalf testifies further on examination by Attorney Lynch. Attorney Lynch makes a statement to the Court of the nature of the property of the bankrupt and of the proposed sale to Procter & Gamble Mfg. Co.

Attorney Iverson makes a statement to the Court on behalf of the Security-First Nat'l Bank.

Attorney McCraney makes a statement to the Court on behalf of Procter & Gamble Mfg. Co.

H. F. Metcalf, the trustee, makes a further statement to the Court.

Attorney Cahill makes a further statement to the Court in support of objections to the confirmation of the sale.

At 11:50 A. M. court recesses herein until 2 P. M. today.

At 2:05 P. M. court reconvenes herein, and all being present as before, Court orders counsel proceed with the hearing.

Attorney Cahill continues with his statement and argues in support of the said petition for Review of the Referee's order confirming the sale, and refers to and reads from the reporter's transcript of the hearing before the referee.

At 3:15 P. M. court recesses. At 3:25 P. M. court reconvenes herein and all being present as before, the Court makes a statement and Attorney Cahill continues his argument in support of said Petition for Review.

At 3:35 P. M. Attorney Lynch makes a statement on behalf of the trustee; at 3:42 P. M. Attorney Iverson argues to the Court on behalf [67] of the Security-First Nat'l Bank.

At 3:51 P. M. Attorney McCraney makes a statement to the Court on behalf of Procter & Gamble Mfg. Co.

At 4 P. M. Attorney Cahill makes a further statement to the Court.

At 4:07 P. M. Attorney Lynch makes a further statement to the Court.

At 4:10 P. M. the Court makes a statement as to further proceedings herein, and directs counsel for the trustee to prepare and present form of written order postponing the ruling of the Court on this Petition for Review and for the consideration of any further bids that the trustee herein may submit for the property of the bankrupt, and the time for the ruling of the Court and the consideration of further bids submitted by the trustee is fixed for April 26, 1948, 10 A. M., before the Court. [68]

[Title of District Court and Cause]

ORDER RE REVIEW FROM REFEREE'S ORDER
OF DECEMBER 19, 1947

Heretofore and on March 11, 1948, at the hour of 10:00 A. M., there came on regularly for hearing before the Honorable Charles A. Cavanah, Judge of the above entitled court, pursuant to notice duly given as required by law, the motion of H. F. Metcalf, Trustee in Bankruptcy herein, for an order approving and confirming the Referee's order made and signed on the 19th day of December, 1947, confirming the sale of certain real property to Procter & Gamble Manufacturing Co., and the petition to review said order duly filed by and in behalf of Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport, Eugene Clark, and the bankrupt corporation; Messrs. Bailie, Turner & Lake, by Allen T. Lynch, appearing as counsel for the Trustee in Bankruptcy, Paul E. Iverson, Esq., appearing as counsel for Security-First National Bank of Los Angeles, a secured creditor, L. M. Cahill, Esq., appearing as counsel for the reviewing parties, Edmund Nelson, Esq., appearing as co-counsel with L. M. Cahill for said reviewing parties, O'Melveny & Myers, by Thomas O. McCraney, appearing as counsel for Procter & [69] Gamble Manufacturing Co., and Joseph Sattler, real estate broker, appearing in pro per; and evidence having been offered and received for and in behalf of the reviewing parties, and the Court having considered said evidence

and the argument of counsel, and it being made to appear to the satisfaction of the Court that a confirmation and approval of the sale to Procter & Gamble Manufacturing Co. might be injurious and prejudicial to the best interests of the creditors of this estate in view of certain facts and circumstances that have arisen since the confirmation of the sale by the Referee; and good cause appearing, and no objection being made thereto;

It Is Ordered that said petition for review and the motion of the Trustee hereinbefore referred to be and they are hereby submitted, and April 26, 1948, at the hour of 10:00 A. M., is hereby fixed by the Court as the time for further consideration of said matter and the hearing of further argument thereon.

It Is Further Ordered that the Trustee in Bankruptcy may submit on said date any additional bids that he receives for said property prior to said time, and the Court will at said time consider any such bids so submitted, and then determine whether or not the interests of this estate and the creditors require the confirmation of any one of the bids so submitted or the confirmation and approval of the Referee's order hereinbefore mentioned.

Dated this 19th day of March, 1948.

CHARLES C. CAVANAH

Judge

[Endorsed]: Filed Mar. 19, 1948. Edmund L. Smith,
Clerk. [70]

[Title of District Court and Cause]

ORDER RE SUPPLEMENTAL CERTIFICATE
ON REVIEW

(Real Estate Commission of Joseph Sattler)

A Memorandum on behalf of Joseph Sattler's Real Estate Commission, on Review re Sale of Real Property, having been presented to the Court, and the Court having duly considered the same, now makes the following order in the above-entitled matter :

It Is Hereby Ordered that the Referee, H. L. Dickson, file a supplement to his Certificate on Review, setting forth the pertinent facts relating to the real estate commission of Joseph Sattler; and

It Is Further Ordered that Joseph Sattler will be heard concerning his claim on April 26, 1948, at 10 A. M., if he so desires.

Dated: Los Angeles, California, March 19, 1948.

CHARLES C. CAVANAH

U. S. District Judge

[Endorsed]: Filed Mar. 19, 1948. Edmund L. Smith,
Clerk. [71]

[Title of District Court and Cause]

SUPPLEMENTAL CERTIFICATE ON REVIEW

I, Hugh L. Dickson, the Referee to whom the above entitled matter was referred on March 1, 1945, hereby submit Supplemental Certificate on Review concerning the agreement to pay a real estate commission to Joseph Sattler.

This Bankruptcy was filed as an involuntary proceeding on March 19, 1935, and after a series of appeals, an Order of Adjudication was entered on January 12, 1937, and was referred to Referee Ernest R. Utley who continued to administer the estate until March 1, 1945, at which time the matter was transferred to me for further administration.

Shortly after the matter was referred to me, Joseph Sattler came into my office and told me that he had reason to believe that he could dispose of the two parcels of property in Long Beach which are now the subject of this Review.

I told Mr. Sattler, in view of the fact that this estate had been in bankruptcy approximately ten years, that I felt that something should be done toward liquidating the estate rather than continued operation, and I told him that if he could find a purchaser for this property, I would allow him a commission not to exceed \$5000.00.

Mr. Sattler immediately began to contact various persons with the view of disposing of this property and finally procured a buyer in the person of The Proctor & Gamble

Manufacturing Co., [72] who made an offer of \$198,000.00 for the purchase.

I announced in open court prior to the confirmation of this sale that I had agreed with Mr. Sattler to pay him a commission not to exceed \$5000.00 if he procured a buyer for this property, and this statement is borne out by a transcript of the proceedings of that date which is attached hereto.

In addition, I am attaching hereto a series of photo-static copies of letters written by Mr. Sattler to various persons in an effort to sell the property which is the subject of this Review.

In the long course of administration of this estate, many sales of real estate have been made and invariably a real estate commission has been paid without objection on the part of the Bankrupt, his Counsel, or any other person and it seems odd now that they take exception to my agreement to pay a commission to Mr. Sattler, which in fact is only about one-half of what he would be entitled to as a licensed real estate broker, which he is.

I have always had the view that the purpose and chief aim of bankruptcy proceeding was liquidation and not operation, and for that reason I sought to facilitate the liquidation of this estate by employing Mr. Sattler as a licensed real estate broker.

Respectfully submitted,

HUGH L. DICKSON

Referee in Bankruptcy

March 29, 1948. [73]

EXHIBIT "A"

1528 South Sycamore Avenue,
Los Angeles 35, California,
August 16th, 1945.

Mr. L. H. Wiggers,
Proctor & Gamble,
Gwynne Building,
Cincinnati, Ohio.

Dear Sir:

In course of searching for a buyer for some land directly behind your plant at Long Beach, California, I have learned that your firm was seeking additional land.

You will kindly note on the enclosed photostat, two prices of property directly behind your plant named "Newport". One piece 250 ft. in width and another piece 500 ft. in width, both fronting on channel #3. On the smaller piece there are *tree* oil wells and on the larger piece six oil wells from which this estate receives an oil (landowners) royalty of over \$4000 a month. Both of these properties are in a bankrupt estate and the bankruptcy court is anxious to dispose of them in fee including the oil royalty. If you are interested, we believe the court would approve a very favorable price.

We hardly think in this Long Beach Harbor are there two such large frontages immediately available for purchase.

Awaiting your reply, I am

Yours sincerely,

Real Estate Broker License
#2362. [74]

EXHIBIT "B"

1528 South Sycamore Avenue,
Los Angeles 35, California,
August 16th, 1945.

Atchison, Topeka & Santa Fe Rwy. Co.
331 Central Building,
108 West Sixth Street,
Los Angeles, California.

Gentlemen:

You will kindly note on the enclosed photostat two pieces of property named "Newport" on channel #3. The 250 ft. piece directly adjoins the Southern Pacific property and has three oil wells on it. The other piece with a 500 ft. frontage on channel #3 has six oil wells on it. Both of these properties produce over \$4000.00 a month in land-owner's oil royalty. Both of these properties are in a bankrupt estate and the bankruptcy court is anxious to dispose of them in fee including the oil royalty. If you are interested, we believe the court would approve a very favorable price.

With the opening of the Panama Canal for coast to coast shipping, we hardly think in this Long Beach Harbor are there two such large frontages immediately available for purchase.

Hoping you can find these properties to be profitable to you, I am

Yours sincerely,

Real Estate Brokers License
#2362 [75]

EXHIBIT "C"

[Crest]

THE PROCTER & GAMBLE MANUFACTURING
CO.

Executive Offices

Cincinnati, 1, Ohio, U. S. A.
September 4, 1945Mr. Joseph Sattler
1528 South Sycamore Ave.
Los Angeles 35, California

Dear Mr. Sattler:

Answering your letter of August 16, we might possibly have some interest in parcel fronting approximately 500 feet on 7th Street across from our Los Angeles plant. We should appreciate your advising the basis on which this property might be acquired.

Very truly yours,

W T. McWhorter
Insurance & Real Estate Department

WTM:JD

[Crest] P. O. Box 599

Cincinnati 1, O., U. S. A.

[U. S. Postage Stamp]

[Stamped]: Cincinnati Ohio Sep 4 1945

Mr. Joseph Sattler
1528 South Sycamore Ave.
Los Angeles 35, California [76]

EXHIBIT "D"

Copy 1528 South Sycamore
Los Angeles 35, California

Mr. W. T. McWhorter Sept. 8, 1945

Executive Offices

The Procter & Gamble Manufacturing Co.

P. O. Box 599

Cincinnati, Ohio

Dear Mr. McWhorter:

Answering your letter of September 4th in which you request being advised the basis on which the 500 foot parcel might be acquired, please be advised as follows:

1st. This estate is in bankruptcy.

2nd. It must be for cash.

3rd. The bid must be approved by the bankruptcy court.

Off the record, from my knowledge of the matter, there is an opportunity for you to get a good buy in this parcel of property. The court is desirous of liquidating this estate and a fair offer stands an excellent chance of meeting the approval of the creditors and the court. As to the values, I surmise you are familiar with them, but if you wish me to amplify the value point, I have made a check thereof and could pass the information on to you for consideration. The point to bear in mind is that the court and the creditors are willing to give you a good deal on an equitable basis.

On this particular piece there are six oil wells whose oil royalty returns are better than \$2500.00 a month. This particular piece contains six acres.

I will be happy to help in any manner for you to acquire this bargain.

Yours truly,

/s/ JOSEPH SATTLER [77]

EXHIBIT "E"

O'MELVENY & MYERS

433 South Spring Street

Los Angeles 13

* * * * *

October 1st, 1945

Cable Address "Moms"

In Reply Refer to

S-2720

Subject

Mr. Joseph Sattler

1528 South Sycamore Avenue

Los Angeles 35, California

Dear Mr. Sattler:

You recently wrote a letter to Mr. W. T. McWhorter of the Procter & Gamble Manufacturing Company regarding the property of the F. P. Newport Corporation, Limited, which is near their plant in Long Beach. I have been asked to contact you and discuss the matter further. I will be glad to talk it over with you in the near future.

Very truly yours,

John O'Melveny

O'Melveny & Myers

433 South Spring Street

Los Angeles 13, Calif.

[U. S. Postage Stamp]

[Stamped]: Los Angeles Calif. Oct 1 6:30 PM 1945

Mr. Joseph Sattler

1528 South Sycamore Avenue

Los Angeles 35, California [78]

EXHIBIT "F"

[Crest]

THE PROCTER & GAMBLE MANUFACTURING
CO.

Executive Offices

Cincinnati, 1, Ohio, U. S. A.
September 11, 1945

O'Melveny & Myers
433 South Spring Street
Los Angeles 13, California

For Mr. John O'Melveny

Gentlemen:

We are writing to you at the suggestion of our General Counsel, Mr. Frank F. Dinsmore to whom we are sending a copy of this letter. Will you please send him a copy of your answer.

We are enclosing a copy of a letter to Mr. L. H. Wiggers from Mr. Joseph Sattler, a real estate broker in your City, a copy of our letter to him of September 4th, and a copy of his answer of September 8th.

We are also enclosing the map which Mr. Sattler sent to us, on which you will notice opposite the property of this Company a six acre tract fronting 500 feet on West Seventh Street, marked "Newport".

We know nothing about Mr. Sattler other than these letters and do not wish to become involved to the extent of being required to pay him a commission in the event of a purchase by us. From other information that we have, we understand that H. F. Metcalf is the Trustee-in-Bankruptcy of F. P. Newport Corporation, Limited, and that Security-First National Bank of Los Angeles have some interest in the bankruptcy proceedings. We assume that these proceedings are in the Federal Court in your City.

Subject to your judgment in the matter, we would suggest that you communicate with Mr. Sattler, and without involving us in any compensation to him, if possible, find out what the facts are in reference to this property and what it could be acquired for, including the oil wells, which he says are returning a royalty of \$2500.00 a month.

Will you please let us hear from you at an early date, with a return of the attached map?

Very truly yours,

W. T. McWhorter

WTM:JD [79]

EXHIBIT "G"

1528 South Sycamore Avenue,
Los Angeles 35, California,
October 12th, 1945.

Mr. W. T. McWhorter,
The Proctor & Gamble Manufacturing Co.
Cincinnati, Ohio.

Dear Sir:

Recently I have had the pleasure of talking to Mr. John O'Melveny with reference to the 500 ft. piece of Newport property on Long Beach Channel. Previous to seeing Mr. O'Melveny I asked Judge Dickson, Referee in Bankruptcy in this matter, if he would be kind enough to informally discuss the sale of this property with Mr. O'Melveny. He, Judge Dickson, informed me that he would be delighted to discuss the subject with Mr. O'Melveny, and I so informed Mr. O'Melveny when I met him. This informal

bring
chat, it is my belief, will \wedge the viewpoint of both you and the court to an agreeable understanding.

I wish to thank you for the privilege you have *giving* me to help.

Yours sincerely,

EXHIBIT "H"

C. R. Pickering
Manager
Land Department

JERGENS OIL COMPANY

Producers of Petroleum

Jergins Trust Building

Telephone 7-1231

Long Beach 2, California

September 14, 1945

Joseph Sattler
1528 South Sycamore
Los Angeles, California

Dear Sir:

We note the notice in the Los Angeles Herald-Express of September 11, 1945, that certain properties are to be sold in the Long Beach Area.

We would appreciate it if you would send us a description of this property.

Yours very truly,

JERGENS OIL COMPANY

By C. R. Pickering

C. R. Pickering

EXHIBIT "I"

1528 South Sycamore Avenue,
Los Angeles 35, California,
September 18th, 1945.

Mr. Pickering,
Manager Land Department,
Jergins Trust Building,
Long Beach, California.

Dear Sir:

Enclosed is map which will identify the two parcels of property mentioned in the Herald-Express of September 11th. Circled in red, the numbers of the particular parcels are #16 and #18.

If these parcels should find any appeal to you, I would be glad to call on you.

Yours sincerely,

California Real Estate Broker License
#2362 [82]

EXHIBIT "J"

1528 South Sycamore Ave.
Los Angeles, California,
December 4th, 1945

Mr. W. T. McWhorter,
Executive Offices,
Proctor & Gamble,
Cincinnati, Ohio.

Dear Sir:

I have just been informed that the Los Angeles Soap Company have just raised the bid for the surface rights to the six acres that you are interested in to \$198,800.00 and have deposited a check for ten percent of this amount with the trustee.

Thanking you for your past courtesy, I am

Yours truly,

L. A. Soap Com
has raised to 198,800
W. T. McWhorter [83]

EXHIBIT "K"

1528 South Sycamore Ave.
Los Angeles, California,
December 28th, 1945

Mr. W. T. McWhorter,
Executive Offices,
Proctor & Gamble Manufacturing Company,
P. O. Box 599,
Cincinnati, Ohio.

Dear Sir:

On January 18th, 1946, the six acre parcel of land behind your property, fronting on the channel, is coming up for sale. At this sale, in the court room, you are privileged to bid for this property. If your bid is higher than the one submitted, your bid then becomes the buyer.

It is hard for me to express to you the value of this property, as you already own property there. Its use, its conveniences, especially rail facilities, now that the Santa Fe Railroad has entered Long Beach, is exceptional. I hardly believe, a piece this size so close to your plant is available with so many facilities for shipment already in.

My suggestion to you is to hop a plane and come out. Buy it first and under this occasion you are sure to buy it right. Wishing you a Happy New Year.

Yours truly

Telephone of above address,
WAlnut 5 8 5 6. [84]

EXHIBIT "L"

[Crest]

THE PROCTER & GAMBLE MANUFACTURING
CO.

Executive Offices

Cincinnati, 1, Ohio, U. S. A.

January 4, 1946

Mr. Joseph Sattler
1528 S. Sycamore Ave.
Los Angeles, Calif.

Dear Mr. Sattler:

This will acknowledge receipt of your letter of December 28.

We are not sure that our Company is still interested in this property but we are passing on the information you have given us to our Factory Management for consideration. We appreciate your calling this matter to our attention.

Yours very truly,

W. T. McWhorter

Insurance & Real Estate Department

WTM:IR

[Crest] P. O. Box 599
Cincinnati, O., U. S. A.

[U. S. Postage Stamp]

[Stamped]: Cincinnati Ohio Jan 4 1946

Mr. Joseph Sattler
1528 S. Sycamore Ave.
Los Angeles, Calif. [85]

EXHIBIT "M"

1528 South Sycamore Avenue,
Los Angeles, California,
January 8th, 1946.

Mr. W. T. McWhorter,
Executive Offices,
The Proctor & Gamble Manufacturing Co.
P. O. Box 599
Cincinnati, Ohio.

Dear Sir:

I am taking the liberty of sending an official notice to the creditors of the F. P. Newport Corporation Bankruptcy, notifying creditors of a sale of six acres of land at Long Beach Harbor, that you showed interest in to make an official bid.

Thanking you for your courtesy, I am

Yours truly,

Joseph Sattler [86]

EXHIBIT "N"

1528 South Sycamore Ave.
Los Angeles, California
February 7th, 1946

Mr. W. T. McWhorter,
The Procter & Gamble Manufacturing Co.
P. O. Box 599,
Cincinnati, Ohio.

Dear Sir:

Had your bid been in the court on the day of the sale, you would have successfully purchased the six acres in Long Beach. The Los Angeles Soap people at the very last moment withdrew their bid. The "view point" of the court is to liquidate this bankruptcy case. If your factory management committee would reconsider this situation you would be the owners of a very valuable piece of ground underpriced.

Your sincerely,

[87]

EXHIBIT "O"

Mutual 24-24
218 H. W. Hellman Bldg.
354 South Spring Street,
Los Angeles 13, California,
February 21st, 1947.

Mr. W. T. McWhorter,
Executive Offices,
The Procter & Gamble Manufacturing Co.
P. O. Box 599
Cincinnati, Ohio.

Dear Mr. McWhorter:

Would your Factory Management Committee give consideration again to the purchase of the six acres behind your Long Beach plant? It has been about a year since our last exchange of letters. Time may possibly have mellowed the view point of the committee. With a return of normal conditions it might be that the committee would look upon the purchase of the property with favor.

Would you be kind enough to again present the matter to them?

Yours very truly,

EXHIBIT "P"

[Crest]

THE PROCTER & GAMBLE MANUFACTURING
CO.

Executive Offices

Cincinnati, 1, Ohio, U. S. A.
February 24, 1947Mr. Joseph Sattler
218 H. W. Hellman Bldg.
354 S. Spring Street
Los Angeles 13, Calif.

Dear Mr. Sattler:

Answering your letter of February 21, we see no reason for again referring this matter to our factory management committee for consideration. If there has been a material downward revision in price, it is possible that the factory management may want to reconsider the matter and in such an event, we should appreciate hearing further from you.

Yours very truly,

W. T. McWhorter
Insurance and Real Estate Department[Crest] P. O. Box 599
Cincinnati, 1, Ohio, U. S. A.

[Stamped]: Cincinnati Ohio Feb 24 1947

Mr. Joseph Sattler
218 H. W. Hellman Bldg.
354 S. Spring St.
Los Angeles 13, Calif. [89]

EXHIBIT "Q"

224 H. W. Hellman Building,
354 South Spring Street,
Los Angeles 13, California,
February 28th, 1947.

Mr. W. T. McWhorter,
Executive Offices,
The Procter & Gamble Manufacturing Co.
P. O. Box 599,
Cincinnati, Ohio.

Dear Mr. McWhorter:

Answering your letter of February 24th, in the matter of a revision of price, the court hasn't any authority to make a revision of price.

What the court must have, before it, is a bid, just as you presented the bid before. Then the court holds a hearing, with all interested parties present, then acts. The bid is either accepted or rejected. This estate is in bankruptcy and the law rules the procedure.

Mr. McWhorter I am the real estate broker. When the fruit is ripe on the tree, everyone wants it, price no object. This piece of harbor land is still a seedling. Grow your own fruit and buy while the estate is desirous of selling. In this particular instance there is a bargain for you. In this particular instance the "view point" of the court is to liquidate this property.

To understand this "view point", the facts are that much of the entanglements of this particular bankruptcy have been liquidated. The indebtedness is now nominal in comparison with the original amount. There are other large parcels of property in this estate. The first large parcel that sells will have a [90] vital bearing in clearing up this bankruptcy. Should then this piece of harbor land revert to private ownership, the bid that you formerly presented for this piece, I hardly believe, would be considered for the three acre piece nearby.

Recently there has been discovered, nearby, a lower prolific oil sand. The present oil operators are willing to drill, providing the present royalty is reduced ten per cent for the lower sand. So far there has been no agreement. If in the near future some understanding should be made between the oil company and the estate, the price for this property, in private hands, might be quoted around a million dollars.

I again impress upon you, the "view point" of the court is to liquidate this estate out of bankruptcy. I would suggest the bid you made, heretofore, for possible favorable results.

Yours very truly,

[Endorsed]: Filed Mar. 29, 1948. Edmund L. Smith,
Clerk. [91]

[Minutes: Monday, April 26, 1948]

Present: The Honorable Charles C. Cavanah, District Judge.

For (1) consideration of any further bids received by the Trustee for the property of Bankrupt, pursuant to order, filed March 19, 1948; (2) ruling by the Court on Petition for Review of Referee's Order filed Dec. 19, 1947, by Dorothy Day, Martha McMillen, Matilda Olsen, Wm. H. Nebless, Mrs. F. P. Newport, Eugene P. Clark and the Bankrupt corporation, heretofore heard by the Court on March 11, 1948; L. M. Cahill, Esq., appearing as counsel for petitioners Dorothy Day, et al.; Mortimer Kline, Esq., appearing as counsel for B. B. Robinson, a prospective purchaser; Allen T. Lynch, Esq., appearing as counsel for Trustee:

Attorney Cahill requests a continuance of two weeks; Attorney Lynch states that the Trustee has not been able to obtain any higher bid; Attorney Mortimer Kline makes a statement re Proctor & Gamble Co. and asks for two weeks continuance; Attorney Cahill makes a statement; the Court makes a statement; and Attorney Lynch makes a statement and reads telegram from Paul Zifran.

H. F. Metcalf is called, sworn, and testifies.

Attorney McCraney, for Proctor & Gamble, makes a statement; Attorney Lynch makes a statement; the Court makes a statement and orders that order of sale of Referee is not confirmed but is reversed. [92]

[Title of District Court and Cause]

OBJECTIONS OF THE PROCTER & GAMBLE
MANUFACTURING CO. TO PROPOSED "OR-
DER VACATING AND SETTING ASIDE REF-
EREE'S ORDER OF DECEMBER 19, 1947, RE
SALE OF REAL PROPERTY TO PROCTER &
GAMBLE MANUFACTURING COMPANY"

To the Honorable C. C. Cavanah, Judge of the Above
Entitled Court:

In accordance with the rules of the District Court of the United States for the Southern District of California, Rule 7(a), Procter & Gamble Manufacturing Co. hereby files its objections to the proposed "Order Vacating and Setting Aside Referee's Order of December 19, 1947, re Sale of Real Property to Procter & Gamble Manufacturing Company".

1. Objects to the failure to make a recital, finding and/or conclusion:

(a) That the express purpose for which the continuance from March 11, 1948 to April 26, 1948, was granted was to [93] permit the Trustee to attempt to find a more favorable sale;

(b) That the Trustee was unable to obtain a more favorable sale, although he diligently attempted so to do;

(c) That there were no objections to the continuance for two weeks requested by the reviewing parties on April 26, 1948, and that counsel for the Trustee and counsel for The Procter & Gamble Manufacturing Co. expressly consented to the granting of said continuance.

2. Objects to the recital, finding, conclusion and/or order:

(a) At page 2, lines 8 to 15:

“that ‘—it being made to appear to the satisfaction of the Court that a confirmation and approval of the sale to the Procter & Gamble Manufacturing Company might be injurious and prejudicial to the best interests of the creditors of this Estate in view of certain facts and circumstances that have arisen since the confirmation of the sale by the referee’.”

(b) At page 3, lines 14 to 17:

“that the consideration offered by said Procter & Gamble Manufacturing Company for said real estate in the sum of \$198,000.00, less the cost of removing certain oil well equipment, was a totally inadequate price for said real estate;”

(c) At page 3, lines 17 to 21:

“that the terms and conditions imposed upon the Trustee and upon the within Estate, by said Company, as terms and conditions of said sale, were and are detrimental and injurious to the within Estate and to the [94] best interests of the creditors thereof;”

(d) At page 3, lines 21 to 24:

“that the Referee was acting beyond his jurisdiction in ordering the payment of said real estate broker’s commission, and that its payment under the circumstances shown would have been unauthorized, and contrary to law;”

(e) At page 3, lines 24 to 28:

“that many of the objections presented in writing to the Referee at the hearing before him were serious objections that should have been sustained by him, and that a confirmation of said sale should not have been made by the Referee herein.”

(f) At page 3, line 32, to page 4, line 5:

“Now, Therefore, It is Ordered, Adjudged and Decreed by the Court:

“That said Order of the Referee in Bankruptcy herein, dated December 19, 1947, confirming the sale of the real property described therein, to Procter and Gamble Manufacturing Company is reversed, vacated and set aside.”

Respectfully submitted,

O'MELVENY & MYERS

PIERCE WORKS

RICHARD C. BERGEN

HOWARD J. DEARDS

By Howard J. Deards

Attorneys for The Procter & Gamble
Manufacturing Co. [95]

[Affidavit of Service by Mail.]

[Endorsed]: Filed May 5, 1948. Edmund L. Smith,
Clerk. [96]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 25308-M

In the Matter of

F. P. NEWPORT CORPORATION, LTD., a corporation,

Bankrupt.

ORDER VACATING AND SETTING ASIDE REFEREE'S ORDER OF DECEMBER 19, 1947, RE SALE OF REAL PROPERTY TO PROCTER & GAMBLE MANUFACTURING COMPANY

Be It Remembered:

That on March 11, 1948, at the hour of ten o'clock A. M. there came on regularly for hearing before the above entitled Court, Honorable Charles C. Cavanah of the above entitled Court presiding, pursuant to notice duly given as required by law, the motion of H. F. Metcalf, Trustee in Bankruptcy herein, for an order approving and confirming the Referee's order made and filed on the 19th day of December, 1947, confirming the sale by said Trustee of certain real property to Procter & Gamble Manufacturing Company and the petition to review said order duly filed by and in behalf of Dorothy Day, Martha McMillen, Matilda Olsen, William H. Neblett, Mrs. F. P. Newport, and the above named bankrupt corporation; at which time there appeared Bailie, Turner & Lake, by Allen T. Lynch, Esq., appearing as counsel for the Trustee in Bankruptcy; Paul E. Iverson, Esq., appearing as counsel for Security-First National Bank of Los Angeles, a secured creditor; L. M. Cahill, Esq., appearing as counsel for the Bankrupt and for said creditors petitioning for [97] review; Edmund Nelson, Esq., appearing as

co-counsel with L. M. Cahill for said reviewing parties; O'Melveny & Myers, by Thomas O. McCraney, Esq., appearing as counsel for Procter & Gamble Manufacturing Company; and Joseph Sattler, a real estate broker, appearing in pro per.; and evidence having been offered and received for and in behalf of the reviewing parties, and the Court having considered said evidence and the argument of counsel, thereafter made its Order that "—it being made to appear to the satisfaction of the Court that a confirmation and approval of the sale to the Procter & Gamble Manufacturing Company might be injurious and prejudicial to the best interests of the creditors of this Estate in view of certain facts and circumstances that have arisen since the confirmation of the sale by the Referee" and that it appearing to the Court that it would be necessary that the entire transcript of the testimony before the Referee be read by it, that said petition for review and said motion of the Trustee and the Trustee's request for further time to receive bids be given to him be submitted and the hour of ten o'clock A. M. April 26, 1948, be fixed by the Court as the time for further consideration of said matters and the hearing of further argument thereon; that thereafter and on April 26, 1948, at the hour of ten o'clock A. M., said petition and said motion came on regularly for hearing pursuant to said order of continuance before the above entitled Court, the Honorable Charles C. Cavanah, Judge of said Court, presiding, at which time there appeared Bailie, Turner & Lake, by Allen T. Lynch, Esq., appearing as counsel for the Trustee in Bankruptcy; Paul E. Iverson, Esq., appearing as counsel for Security-First National Bank of Los Angeles, a secured creditor; L. M. Cahill, Esq., appearing as counsel for the Bankrupt and for said creditors petitioning for review; Edmund Nelson, Esq., appearing as

co-counsel with L. M. Cahill for said reviewing parties; O'Melveny & Myers, by 'Thomas O. McCraney, Esq., and Richard Cheney Bergen, Esq., appearing as counsel for Procter & Gamble Manufacturing Company; and Joseph Sattler, a real estate broker, appearing in pro. per.; and an oral motion having [98] been made by the said L. M. Cahill, Esq., upon behalf of said reviewing parties for a two weeks continuance of said matters and said motion having been denied by the Court; and further evidence having been offered and received for and on behalf of said reviewing parties, and the Court having examined the said Petition to Review the Referee's Order and the Referee's certificate on Review, dated the 28th day of January, 1948, and the amendment thereto in reference to that part of the Referee's said Order which directed the payment of a real estate broker's commission to the said Joseph Sattler; and having examined the transcript of the record of the proceedings before the Referee in said matter, and having considered said certificate, said amendment and said transcript and all of said evidence and the argument of counsel; and it appearing to the satisfaction of the Court that the consideration offered by said Procter & Gamble Manufacturing Company for said real estate in the sum of \$198,000.00, less the cost of removing certain oil well equipment, and payment of other costs and if allowed the payment of the alleged commission was a totally inadequate price for said real estate; and that the terms and conditions imposed upon the Trustee and upon the within Estate, by said Company, as terms and conditions of said sale, were and are detrimental and injurious to the within Estate and to the best interests of the creditors thereof; and it further appearing that the Referee was acting beyond his jurisdiction in ordering the payment of said real estate broker's commission, and

that its payment under the circumstances shown would have been unauthorized, and contrary to law; and that many of the objections presented in writing to the Referee at the hearing before him were serious objections that should have been sustained by him, and that a confirmation of said sale should not have been made by the Referee herein, and being fully advised in the premises, the Court concludes, that the said Order of the Referee, so transferred to this Court for review, should be reversed, vacated and set aside;

Now, Therefore, It Is Ordered, Adjudged and Decreed by the [99] Court:

That said Order of the Referee in Bankruptcy herein, dated December 19, 1947, confirming the sale of the real property described therein, to Procter and Gamble Manufacturing Company is reversed, vacated and set aside.

May

Dated this 10th day of ~~April~~, 1948.

CHARLES C. CAVANAUGH

Judge of the United States District Court

Approved as to form: Bailie, Turner & Lake, by Allen T. Lynch, Counsel for the Trustee Herein. Paul E. Iverson, Counsel for Security-First National Bank of Los Angeles. Edmund Nelson, Co-counsel for Reviewing Parties. L. M. Cahill, Co-counsel for Reviewing Parties. O'Melveny & Myers, by, Counsel for Procter & Gamble Manufacturing Company.

Notation made in Bankruptcy Docket, pursuant Rule 79a F. R. C. P., on May 12, 1948.

Judgment entered May 12, 1948. Docketed May 12, 1948. Book 50. Page 627. Edmund L. Smith, Clerk, by E. M. Enstrom, Jr., Deputy.

[Endorsed]: Filed May 12, 1948. Edmund L. Smith, Clerk. [100]

[Title of District Court and Cause]

NOTICE OF APPEAL OF PROCTER & GAMBLE
MANUFACTURING CO.

Notice Is Hereby Given that Procter & Gamble Manufacturing Co. hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain minute order reversing the Referee's order of December 19, 1947, made by the above entitled Court and entered April 26, 1948, and from that certain order of the above entitled Court entitled "Order Vacating and Setting Aside Referee's Order of December 19, 1947, Re Sale of Real Property to Procter & Gamble Manufacturing Company," signed May 10, 1948, filed May 12, 1948, and entered May 12, 1948, in Civil Order Book 50 at page 627, and from the whole of each of said orders.

O'MELVENY & MYERS
PIERCE WORKS
RICHARD C. BERGEN
HOWARD J. DEARDS

By Howard J. Deards

Attorneys for Procter & Gamble
Manufacturing Co. [101]

[Affidavit of Service by Mail.] [102]

[Endorsed]: Filed May 25, 1948. Edmund L. Smith,
Clerk. [103]

[Title of District Court and Cause]

ORDER AS TO ORIGINAL EXHIBITS

It appearing to the satisfaction of the Court that in the preparation of the record on appeal to the Circuit Court of Appeals for the Ninth Circuit pursuant to the Notice of Appeal filed herein on May 25, 1948, by appellant Procter & Gamble Manufacturing Co., the original exhibits filed with Referee's Certificate on Review on January 28, 1948, should be sent to the appellate court in lieu of copies thereof;

Now, Therefore, It Is Hereby Ordered that the Clerk of this Court in forwarding the record on the aforesaid appeal to the Circuit Court of Appeals for the Ninth Circuit shall send the original exhibits filed with Referee's Certificate on Review on January 28, 1948, in lieu of copies thereof.

Dated this 28th day of June, 1948.

PAUL J. McCORMICK

Judge

[Endorsed]: Filed Jun. 28, 1948. Edmund L. Smith,
Clerk. [113]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 113, inclusive, contain full, true and correct copies of Creditors' Involuntary Petition in Bankruptcy; Adjudication and Order of Reference; a portion of Minute Order Entered February 28, 1945; Petition for Authority to Sell and for Confirmation of Sale of Real Property to the Procter & Gamble Manufacturing Co.; Objections of Creditors and of the Bankrupt to Proposed Sale of Real Property; Objections of Ruby E. Neblett to Proposed Sale of Property of Bankrupt to Procter & Gamble Company; Memorandum in Support of Petition for Authority to Sell and for Confirmation of Sale of Real Property to the Procter & Gamble Manufacturing Company; Findings of Fact, Conclusions of Law and Order of Referee; Petition to Review Referee's Order; Referee's Certificate on Review; Minute Order Entered March 11, 1948; Order re Review from Referee's Order; Order re Supplemental Certificate on Review; Supplemental Certificate on Review; Minute Order Entered April 26, 1948; Objections of the Procter & Gamble Manufacturing Co. to Proposed Order Vacating and Setting Aside Referee's Order of December 19, 1947, re Sale of Real Property to Procter & Gamble Manufacturing Company; Notice of Appeal of Procter & Gamble Manufacturing Co.; Statement

of Points on Which Appellant Intends to Rely on Appeal; Designation of Contents of Record on Appeal and Order re Original Exhibits, which, together with copy of reporter's transcript of proceedings on November 13, 24 and 26 and December 1, 1947; December 1, 1947; March 11, 1948, and April 26, 1948, and Original Exhibits filed January 28, 1948, with Referee's Certificate on Review, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$28.80 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 30 day of June, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

Before Hon. Hugh L. Dickson, Referee in Bankruptcy

REPORTER'S TRANSCRIPT

Los Angeles, Calif.

November 13, 1947

Appearances:

For the Trustee: Bailie, Turner & Lake, by Allen T. Lynch, Esq.

For Security First National Bank: Paul E. Iverson, Esq.

For Certain Creditors and the Bankrupt: Lawrence M. Cahill, Esq.

Los Angeles, California, Thursday, November 13, 1947.

10:00 A. M.

Mr. Lynch: The Trustee is ready, your Honor, but there are numerous objections to the sale which have been filed, consequently it is going to take us some time to hear this matter. Counsel for the Security-First National Bank has suggested that they would like the matter continued for one week. As far as the Trustee is concerned, we have no objection.

The Referee: If it is going to take all day I will put it on a non-calendar day.

Mr. Lynch: It will probably take at least a day.

Mr. Cahill: It will.

Mr. Lynch: I understand that Mr. Nelson is here and the bank objects to the sale.

Mr. Nelson: Yes.

The Referee: No one is in favor of it?

Mr. Iverson: Yes, they are. The Security-First National Bank is in favor of it.

Mr. Cahill: In support of the objections filed on behalf of a number of creditors represented by my office, and on behalf of the bankrupt, I have one witness here who is being transferred to the Southern Pacific Company offices from here to San Francisco shortly. He will reside there permanently and will be unable to return [2*] at the continued hearing. I wonder if it would be possible to put him on the stand and take testimony from him with regard to the value of the property.

The Referee: Let's have him.

Mr. Cahill: Mr. Higgins, will you come forward, please.

HARRY C. HIGGINS,

called as a witness on behalf of the Objector, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cahill:

Q. What is your full name?

A. Harry C. Higgins.

Q. What is your business or occupation?

A. Up to the first of this month, I have been Land Appraiser for the Southern Pacific Company—since 1922.

Q. You are now being transferred?

A. I am now transferred to San Francisco to take over the land and appraising of the entire Southern Pacific Company.

Q. As Evaluation Engineer?

A. Engineer and Land Evaluation will be my title. [3]

Q. Have you had experience in appraising water front property? A. Yes, I have.

(Testimony of Harry C. Higgins)

Q. Starting when, in what year?

A. Since 1922, with the Southern Pacific, I have appraised over a hundred million dollars worth of property, including water front lands at San Francisco, Oakland, Alameda, Portland, San Pedro and Long Beach.

Q. Prior to that, have you appraised similar lands for other companies?

A. Six years prior to that I was Land Appraiser for the A.T.S.F. Railway Company. My appraisals for that work covered about twenty million dollars, including water front lands at San Diego, San Francisco, Oakland, Richmond and Stockton.

Q. Are you familiar with the Newport lands on the channel of the harbor, Mr. Higgins?

A. Yes, I am, Mr. Cahill.

Q. Are you particularly familiar with the six acre parcel? A. Yes, sir.

Q. Does the Southern Pacific own adjacent and adjoining lands? A. Yes, they do.

Q. What acreage adjoining?

A. The Southern Pacific owns 31.86 acres now. [4]

Q. Have you recently had an opportunity for your company to appraise the 31 acres?

A. Yes, in fact I appraised that property before the Southern Pacific purchased it in 1924. It had been my duty to constantly keep abreast of all sales, development and leases at that point.

Q. Have you made an appraisal of the lands of the Trustee in Bankruptcy of the F. P. Newport Corporation?

A. Yes.

(Testimony of Harry C. Higgins)

Q. When did you make that?

A. I made that January 30, 1946.

Q. Was that reduced to a written appraisal? In other words, did you prepare a written report on it?

A. Yes, I did.

Q. Is that the report you have in your hand, Mr. Higgins? A. It is a copy.

Q. The original was delivered to the bankrupt?

A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. Have you had occasion since that date to check your figures and arrive at a new appraisal?

A. Yes, I have.

Q. Will you state first what your appraisal was [5] as of the date stated by you?

Mr. Iverson: I think that is irrelevant, if the Court please.

The Referee: What is the date?

Mr. Cahill: January 30, 1946.

Mr. Iverson: We are talking about today, not January 30, 1946.

The Referee: I sit in the middle on experts. Some say \$100,000.00 and some say millions, so I am not overawed by either side. All right, what was the date?

The Witness: January 30, 1946 it was \$359,436.00.

By Mr. Cahill:

Q. That was for the six acre parcel?

A. Well, Mr. Cahill, I am very technical. My figure is 5.9906.

Q. Just a trifle under six acres? A. Yes.

Q. Have you had occasion since that date to re-evaluate the property? A. Yes, I have.

(Testimony of Harry C. Higgins)

Q. Have you arrived at an opinion of a new appraisal?

A. Well, Mr. Cahill, I did not change that figure as of the present time.

Q. You believe the value is the same?

A. I still believe it to be worth the figure I [6] put on there January 30, 1946.

Q. Now, as to the 31 acres of the Southern Pacific Company, is that now being offered for sale?

A. No, the Southern Pacific land has been taken off the market, and will be until such time as the revenue from the oil has been reduced or diminished.

Q. Have you had occasion to appraise that 31 acres for your company recently? A. Oh, yes.

Q. Will you state the appraisal.

The Referee: Is it adjacent to this property?

Mr. Cahill: He has so testified.

The Referee: On the water front?

Mr. Lynch: May we know where?

By Mr. Cahill:

Q. Mr. Higgins, do you have an aerial photograph with you? A. Yes.

Q. Will you hand it to the Court, please?

A. Yes.

Q. Will you point out the Newport properties on the aerial photograph?

A. This is the Newport property and this is the Southern Pacific (indicating).

The Referee: Talk out loud, Mr. Higgins. The reporter would like to hear this. Don't whisper to me. [7]

A. All right.

(Testimony of Harry C. Higgins)

Q. When you say this, what are you pointing to?

A. The Southern Pacific property is in that particular peninsula which juts out into Long Beach Harbor. The Newport property is immediately adjoining on Channel No. 3. I believe that is to the south (indicating).

Q. You say the Southern Pacific property is not for sale?

A. Not as long as oil is producing a revenue.

The Referee: All right, proceed.

By Mr. Cahill:

Q. The question was as to the evaluation you have made.

Mr. Iverson: May I see that document?

The Witness: The date on the back shows when the picture was taken.

By Mr. Cahill:

Q. Will you state the evaluation you placed on the Southern Pacific Company's land, Mr. Higgins? Was it on an acre basis? A. Yes, it was.

Q. How much per acre?

A. I put \$60,000.00 per acre on the same land.

Q. That was how recently?

A. That was about six months ago. [8]

Q. Do you still believe that that is the figure?

A. I would like to qualify that. \$60,000.00 an acre is for surface rights, only for industrial purposes.

Q. It does not include the minerals?

A. No.

Q. Do you regard the value of the lands of your company for water front purposes equal, less or superior

(Testimony of Harry C. Higgins)

—let us say superior to those of the subject lands, this six acres of the Newport Corporation?

A. I would say they are the same.

Q. Approximately the same value?

A. Same value.

Mr. Cahill: That is all.

The Referee: Any further questions?

Mr. Lynch: Yes, Your Honor.

Cross Examination

By Mr. Lynch:

Q. Mr. Higgins, in appraising this six acre parcel, or approximately six acres, did you take into consideration the oil rights on that property?

A. No, I didn't.

Q. You did not split your appraisal and give so much to the oil rights on the property and so much to the surface rights? [9]

A. No, I didn't.

Q. So your appraisal of \$359,436.00 takes with it all of the oil rights and the surface rights; it is all of the rights of the property?

A. It is surface rights only for industrial purposes. It does not include minerals.

Q. You did not give any evaluation then to the oil rights?

A. No, I didn't.

Q. Or the minerals underground?

A. No, not as separate.

Q. The \$359,000 does not include that?

A. No, it doesn't include the oil.

Mr. Lynch: That is all.

(Testimony of Harry C. Higgins)

Cross Examination

By Mr. Iverson:

Q. Do you know of any recent sales of property down there, Mr. Higgins?

A. Well, every sale that has taken place in the last twenty-five years on that particular location.

Q. What is the most recent sale near the F. P. Newport property?

A. The most recent sale of water front land has been Patton Blinn to Spreckles.

Q. Where is that located? [10]

A. (No answer by the witness.)

By the Referee:

Q. When was the sale made to them?

A. Patton Blinn sold that property to Spreckles in March, 1946. That is located on the northerly side of Channel 2 of the Long Beach Harbor. It contained 37.328 acres.

By Mr. Iverson:

Q. Where is the F. P. Newport property from this property?

A. Right there (indicating).

Q. What was the sale price of this Patton Blinn property? A. It is a complicated affair.

By the Referee:

Q. What was it in dollars and cents without the complications?

A. The total amount paid for the value of the land was \$1,210,000.00 for 37.328 acres which gives you a result of seventy-four cents per square foot.

(Testimony of Harry C. Higgins)

Q. What is that per acre, have you figured it out?

A. \$32,415 per acre.

Q. That is about half of the value you put on the other isn't it?

A. Yes, it is, Your Honor, and it is a deeper [11] piece of property. It has a depth of more than 1400 feet. In our experience, or in my experience, I should say, with water front land, we do not carry water front value back farther than 500 feet.

By Mr. Iverson:

Q. What other recent sales have there been in that area?

A. That is the only recent sale I have in the Long Beach Harbor of water front land. There are other sales that don't cover water front land at all, but they are close to this area. It happens to be the Santa Fe property. The Santa Fe bought 4.47 acres.

Q. Where is the Santa Fe property?

A. The Santa Fe property is to the east of Channel No. 2.

Q. How far away from the Newport property is it?

A. It is 400 feet from the water front.

Q. It is not water front property, then?

A. It is not water front property.

Q. Do you know when the most recent sale other than Patton Blinn sale of property of water front nature was made in this area?

A. Oh, I think the last sale that was made there was perhaps the sale that the Southern Pacific sold to Proctor and Gamble. [12]

(Testimony of Harry C. Higgins)

Q. How long ago was that?

A. That was in 1936, the last sale made to Procter and Gamble by the Southern Pacific Company.

Q. Where was that property located?

A. That was located on the southerly side of Channel No. 2.

Q. How many acres? A. 2.3711 acres.

Q. What was the price?

A. The price was \$62,834 or \$26,500 per acre.

Q. What other sales have been made in that area within the last ten or fifteen years?

A. Well, Mr. Breslin sold a piece of property on the south side of Channel No. 2, which only had 150 foot frontage on the channel and extended back to a depth of 521 feet to Seventh Street. That was \$50,000 per acre.

Q. How long ago was that sale made?

A. That was about 1931.

Q. To whom did he sell it?

A. I think Breslin bought it, I am sorry about that. Breslin purchased the property at the time, G. P. Breslin.

Q. From whom did he purchase it?

A. About 1931.

Q. From whom, do you know?

A. Well, the Los Angeles Dock and Terminal. [13]

Q. How much did you say the price was?

The Referee: \$26,500.00 per acre; total price \$62,834.00 for 2.3711 acres.

The Witness: That is not the piece he is asking about now, Your Honor.

The Referee: That is Procter and Gamble, I beg your pardon.

(Testimony of Harry C. Higgins)

The Witness: That is the parcel the Southern Pacific Company sold to Proctor and Gamble.

The Referee: What was the price that Breslin paid?

The Witness: Breslin paid \$40,000 for that 150 feet.

The Referee: Anything further?

Mr. Iverson: That is all, Your Honor.

Mr. Lynch: One or two more questions.

The Referee: All right.

Recross Examination

By Mr. Lynch:

Q. Mr. Higgins, in appraising this particular parcel, did you take into consideration the fact that the surface use was limited by virtue of the fact it was covered with derricks and oil equipment and could not be used for approximately twenty years?

A. No, I didn't. [14]

Q. You assumed in making your evaluation, that the surface could be used without interruption?

A. Yes, I did.

Mr. Lynch: That is all.

Mr. Cahill: May I ask a few questions, Your Honor?

The Referee: Yes, but first let's inquire. You say twenty years. I understood that lease expired in 1953.

Mr. Cahill: It is 1963, I think.

The Referee: I see.

Redirect Examination

By Mr. Cahill:

Q. What part or portion of the Patten Blinn sale do you regard as not water front property?

A. If you will notice the map, Mr. Cahill, on that particular property there is a Pacific Electric right of

(Testimony of Harry C. Higgins)

way extending in a southwesterly direction and paralleling Channel No. 2 at a distance of about 500 feet from the channel. Only that portion between the Pacific Electric right of way and channel No. 2 is considered as water front land.

Q. What is the division in percentages, approximately?

A. You mean the area? [15]

Q. Yes. Is it half and half or one third and two thirds? Just what is it, Mr. Higgins?

A. I have got it here, 417,500 square feet, almost ten acres.

Q. That is not water front property?

A. No. That is water front.

Q. I said water front property.

A. I misunderstood the question. The rear portion is 791,000 square feet that is not considered water front land.

Q. The approximate value in your opinion, of the lands that are not water front lands, per acre is how much?

A. Sixty cents per square foot.

Q. The non-water front property?

A. The non-water front property at sixty cents per square foot.

Q. Do you recall the channel frontage of the Patton Blinn parcel in lineal feet?

A. The Patten Blinn piece that was sold to Spreckles has a frontage of—I am sorry, Mr. Cahill, but I don't have that particular feature of it. My estimate is that

(Testimony of Harry C. Higgins)

it is about 1500 feet, just from the map. I don't have a scale with me.

Mr. Cahill: Thank you, Mr. Higgins. I have no objection to a continuance, now, Your Honor. [16]

Mr. Lynch: May we have this photograph of the property, Mr. Higgins?

The Witness: Well that happens to be the property of the Southern Pacific Company.

The Referee: Wouldn't you lend it to us?

The Witness: You can get copies of it from the Pence Photo Company.

Mr. Lynch: Will you do that and we will pay for it. Now I would like to direct the Court's attention to the piece of property designated as Parcel No. 11, the one testified about, and call your attention to the water frontage on that particular piece of property. If the Court will note the neighboring property, there has been heavy erosion on it and we have very little water frontage as compared with the other.

The Referee: Will you be good enough to have a copy made of this and send us the bill? Mail it to me, if you wish. Any other questions, gentlemen?

Mr. Lynch: That is all. What about the 21st, a week from tomorrow?

Mr. Cahill: That is satisfactory.

The Referee: Very well, the matter is continued to November 21 at 10:00 o'clock in the morning. [17]

Los Angeles, California, Monday, November 24, 1947,
10:00 A. M.

The Referee: You may proceed.

Mr. Lynch: The Trustee in Bankruptcy in this matter offers for sale that portion of the Rancho Los Cerritos, in the City of Long Beach, described as follows:

“Beginning at the most Southeasterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577, Page 105 of Deeds, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed, North 19 degrees 42' 30" East 738.08 feet; thence North 64 degrees 42' 30" East 500 feet; thence South 19 degrees 42' 30" West 738.08 feet to a point in said Northwesterly line of Channel No. 3; thence along said Northwesterly line South 64 degrees 42' 30" West 500 feet to the point of beginning.”

The Trustee has an offer for this property in the sum of \$198,000, subject, however, to the following conditions:

That said Trustee vest in the company good title to the said land, free of all claims, liens, encumbrances, conditions, restrictions, reservations, easements and rights of way, except that certain oil and gas lease hereinafter mentioned and except such matters as may be approved by the Company, and that you provide the Company [20] with a title policy in the principal amount of \$180,000, evidencing a good title as aforesaid.

At this point, Mr. Bergen represents the bidder. And may I ask Mr. Bergen at this time, is it your understanding that the Company—meaning Procter & Gamble Company—will approve the restrictions and rights of way of record?

Mr. Bergen: That is right.

Mr. Lynch: Reserving and excepting to said Referee in Bankruptcy all rents, royalties, and other things of value accruing pursuant to and prior to the expiration, surrender, or other termination of that certain oil and gas lease dated January 14, 1938, by and between said Trustee in Bankruptcy and others, as lessors, and the Universal Consolidated Oil Company, as lessee, and recorded in the office of the County Recorder of the County of Los Angeles, in Book 15515, Page 326, Official Records, subject, however, to Trustee's obligation to pay all taxes relating to oil, gas, or hydrocarbon substances in, on, or under said land prior to the expiration, surrender, or other termination of said lease.

That said Trustee in Bankruptcy procure a letter addressed to the Company and executed by the proper officials of the Universal Consolidated Oil Company, in a form approved by counsel for the Company and granting permission to the Company to use that portion of said land outlined on the map attached hereto as Exhibit A, as a [21] baseball park and a parking area.

That said Trustee in Bankruptcy pay all costs and expenses of every kind and nature pertaining to the removal of all obstructions on that portion of said land outlined on the map attached hereto, including, but without limiting the generality of the foregoing, all storage tanks, power poles, oil lines, sumps, steam lines and concrete walls, excepting the wall located upon the easterly border of said land.

That said Trustee in Bankruptcy pay all commissions relating to this transaction.

Said sale to be consummated and final order approving sale within sixty days from October 27, 1947.

Is there anyone interested in bidding on this property?
(No response.)

H. F. METCALF,

Trustee, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lynch:

Q. You are the Trustee in Bankruptcy in this matter?

A. Yes.

Q. Are you familiar with the property referred to?

A. Yes.

Q. Do you have the map which was referred to as Exhibit A and attached to the letter from the Procter & [22] Gamble Company? A. Yes, I do.

Mr. Lynch: We offer the map as Trustee's first in order.

The Referee: That will be Exhibit 1 for the Trustee, Trustee's Exhibit 1. We will mark that Trustee's number 1, the map.

(Whereupon the map referred to was marked Trustee's Exhibit 1.)

Q. Mr. Metcalf, I show you three letters, one dated September 9, 1947, addressed to you as Trustee, and signed O'Melveny & Myers, by Richard C. Bergen.

Is that the letter you received in connection with this offer on or about the date it bears? A. Yes.

Q. I show you a letter dated October 15, 1947, addressed to yourself and signed by O'Melveny & Myers, per John O'Melveny.

Is that the letter, is that another letter you received on or about the date it bears, in relation to an offer?

A. Yes.

(Testimony of H. F. Metcalf)

Q. And I show you another letter dated October 28, 1947, addressed to myself, but a copy of which went to you. Did you receive a copy of that letter?

A. Yes. [23]

Q. Signed Richard C. Bergen? A. Yes.

Mr. Lynch: While counsel is examining these letters, Mr. Bergen, who represents Procter & Gamble, will stipulate that Procter & Gamble is to take the property subject to such rights as the City of Long Beach may have under its contract relating to the drilling sight obtained by the City, on which they have one well drilling under Channel 3.

Mr. Bergen: That is correct.

By Mr. Lynch:

Q. Did you obtain a statement in writing as to the approximate cost of doing the work that is referred to in the letter? A. Yes.

Q. Do you have that with you? A. Yes.

Q. May I see it? A. Yes.

Q. You have shown me a letter from the Winter Construction Company, signed by Brook Hawkins, Vice President, dated November 12, 1947; and another letter, under the same date, addressed to you, to which reference is made in the letter of November 12, 1947.

A. The second letter is an itemized statement of those things they propose to do. They are set forth there [24] in itemized form.

Q. This letter was received from Winter Construction Company on or about the date it bears? A. Yes.

(Testimony of H. F. Metcalf)

Q. The total offer to do the work referred to is \$20,378.00?

A. That, they tell me, is the maximum price. They hope to save some money on it.

Mr. Lynch: As Trustee's Exhibit Number 2, the three letters received from O'Melveny & Myers, dated September 9, 1947, October 15, 1947, and October 28, 1947, respectively as one exhibit, those contain the offer of the Procter & Gamble Company.

The Referee: Trustee's number 2.

(Whereupon the documents referred to were marked Trustee's Exhibit 2.)

Mr. Lynch: While counsel is examining that I might go to the fact that this property was appraised by an appraiser appointed by the Court, Thomas J. Cunningham, incidentally, now a Superior Court judge, in the sum of \$211,462.00, exclusive of all oil rights.

Mr. Cahill: Will you give us the date?

Mr. Lynch: My copy does not show the date.

The Referee: As I recall it, approximately a year ago, for Los Angeles Soap Company, about December, 1945, or January, 1946. [25]

Mr. Iverson: What was that figure, again?

Mr. Lynch: \$211,462.00. The Trustee asks that that appraisal be made a part of the record.

The Referee: I know I appointed Mr. Cunningham after considerable inquiry.

Mr. Cahill: I have in my file written objections of creditors to that sale, filed January 8, 1947. That will indicate the approximate date.

The Referee: I am sure it was in 1946.

(Testimony of H. F. Metcalf)

Mr. Cahill: It will be approximately two years next January.

Mr. Lynch: I think the actual appraisal was made in December, 1945. May it be understood that is part of the record?

The Referee: That will be admitted by reference, yes.

Mr. Hess: Was any appraisal made of the oil rights separately?

Mr. Lynch: No.

Mr. Hess: And no appraisal of the oil rights of the existing lease?

Mr. Lynch: No.

The Trustee offers the letter dated November 12, 1947, as Exhibit 3, together with the papers attached thereto. The Trustee now recommends the approval of the sale.

Mr. Cahill: Your Honor is advised written objections have been filed in my office on behalf of certain creditors [26] of the bankrupt.

Mr. Lynch: The burden of proof is on the parties objecting.

Mr. Nelson: I would like to ask for a stipulation that the Bank of America may rely on the written objections filed by Mr. Cahill.

The Referee: You want to join in with them?

Mr. Nelson: Without filing separate objections.

Mr. Lynch: I have no objection.

Mr. Cahill: Has Your Honor had an opportunity to read the objections I filed?

The Referee: Yes.

Mr. Cahill: That will eliminate the need of a statement on my part. And I will endeavor to proceed now to

(Testimony of H. F. Metcalf)

place before the Referee and before the Court evidence in support of those objections.

The Court: All right.

Mr. Cahill: I assume it will be stipulated by all parties concerned that the testimony given by Mr. Higgins on the day this matter was first called—

The Referee: Last Tuesday.

Mr. Cahill: The testimony given by Mr. Higgins will be considered testimony in support of the objections.

Mr. Lynch: Yes. Is he still here?

Mr. Cahill: No.

Mr. Lynch: Will counsel stipulate the articles set [27] forth in the Press-Telegram, of March 24th, 1946, relating to the sale of the Spreckels' property, concerning which Mr. Higgins testified, may be admitted in evidence for what it is worth, purporting to set forth facts and figures.

I am asking if you will stipulate.

The Referee: The newspaper article will be received in evidence.

(Whereupon the paper referred to was received in evidence as Trustee's Exhibit 4.)

Mr. Lynch: Will it be stipulated that a notice of the hearing of this matter was published in the Los Angeles Daily Journal, November 17 and November 19, and I will produce a copy of that notice that was in the Los Angeles Journal.

Mr. Hess: I do not care to stipulate.

Mr. Lynch: This is the one of this particular hearing, November 17-19.

(Testimony of H. F. Metcalf)

Mr. Hess: The hearing was on the 21st, on a four-day notice?

Mr. Lynch: Yes.

Mr. Hess: If the notice is offered for the purpose of indicating that the property itself has been offered for sale and this is the first notice of any public offering for sale, I would object on the ground the notice is not a reasonable one in time.

Mr. Lynch: The effect of it is a matter of argument. [28] There is no requirement of a publication of notice. I simply ask that counsel stipulate that such a notice was published on November 17 and November 19.

Mr. Hess: I will stipulate that notice was so published.

Mr. Cahill: I have no objection to stipulating that notice was published.

The Referee: It was widely publicized last year at the expense of the Los Angeles Soap Company, at approximately \$1000.00.

Mr. Cahill: I do not want to stipulate it is a notice of sale. I doubt if it is, legally.

Mr. Lynch: We do it under the Referee's ruling that a notice of hearing of these matters should be given in the papers.

Mr. Cahill: What is that date?

Mr. Lynch: November 17th and 19th.

Mr. Iverson: What was the date of the Long Beach Press-Telegram?

The Referee: March 14, 1946, Thursday, March 14, 1946, it shows here.

Mr. Cahill: In stipulating that newspaper article be admitted, we have reserved the right to show by evidence if there are any errors in there.

(Testimony of H. F. Metcalf)

The Referee: Certainly.

Have you had any other offers from any other source [29] for the purchase of this property since we had it up for sale, in 1946?

The Witness: Yes, I had, I have had a great many applications for it.

The Referee: What do you mean by that?

The Witness: People want to know, brokers want to know what it could be had for. I have discussed it with probably five or six, who claim they had active prospects for it, and when I told them the price at which they would have to bid, they withdrew.

The Referee: What price did you tell them?

The Witness: I told them we had an offer of \$198,000 that was good and definite, all cash; but that offer required the movement of certain fills from the property which would cost us a considerable sum of money. I told them, I said, "If you will make an offer and guarantee that amount, an offer somewhat less might be acceptable." And they withdrew.

I had one broker who came and who wanted to buy the surface rights. But after examination they found they couldn't get access, they couldn't put the buildings on that they wanted on the lot in order to justify the price they paid.

They came to me and said if I could close well No. 6, which is in the middle of the six acres, they would make a definite offer. [30]

I went to the oil company and asked Mr. Starr, the president, what he would charge to close well No. 6. And after considerable maneuvering he said \$32,500, to him. And I couldn't see it was a proper offer at all.

(Testimony of H. F. Metcalf)

Mr. Lynch: While the burden is on these parties objecting, I have no objection to going ahead at this time to have Mr. Metcalf point out what efforts he has made on this sale.

By Mr. Lynch:

Q. Did you list this property with any brokers?

A. Yes, I listed it with everyone in Long Beach that I could get hold of. I sent out folders to five hundred brokers in Long Beach. I advertised, offered the property in this district, in the Long Beach Press-Telegram on a number of occasions. The last one was about six or eight months ago, possibly more, and I spent about \$75.00 on that. And I got a great many calls.

Q. Did you list the property with others, that is, among others did you list it with Mr. Tom Mason?

A. I discussed it very freely with Tom Mason on many occasions.

Q. Who is Mr. Mason?

A. He is an appraiser and real estate broker, in the City of Los Angeles, whom I have known for many years.

Q. Does he specialize in business properties?

A. I understand that he does. [31]

Q. Industrial properties? A. Yes.

Q. In the Long Beach-Wilmington Area?

A. Yes.

Q. You did have an offer for this property from the Copra Oil & Meal Company Ltd., in 1945?

A. Who?

Q. Copra Oil & Meal Company, commonly referred to as the L.A. Soap Company. A. Yes.

Q. And that offer was in the sum of how much?

A. \$198,800, as I recall it.

(Testimony of H. F. Metcalf)

Q. And prior to that offer did you advertise this property for sale?

A. I believe I did.

Q. Did you advertise it in the Portland Oregonian?

A. I advertised it in the San Francisco Chronicle, I think the Seattle Post-Intelligencer.

Q. I show you what purports to be a statement made up by you of the cost of advertising, listing the dates, and so forth. Is that a statement made by you?

A. That is correct.

Q. Just subsequent to the time that the advertising was done? A. That is correct.

Q. In connection with the reimbursement of the costs [32] of that advertising by the Copra Oil & Meal Company— A. That is right.

Q. Can you state what advertising you did at that time?

A. The Portland-Oregonian and the Chicago Tribune.

Q. What dates, please.

A. The first was January 11th to the 15th, 1945. No, that is January, 1946. Chicago Tribune, January 10-14; Long Beach Reporter five days, January 11th, 15th, 18th, 22nd, and 25th; and the Los Angeles Times, January 8th, 9th, and 10th. The Los Angeles Examiner January 9th to the 13th, inclusive; and the Daily Shopping Guide five days, in January, 1946. The aggregate cost of that was \$640.80.

Q. That offer you obtained from the Copra Oil & Meal Company was withdrawn?

A. Their attorney, Mr. Dockweiler, I got it, giving as his reason they couldn't get their buildings, they couldn't adapt themselves to the lot.

(Testimony of H. F. Metcalf)

Q. An order was made in this court to permit a withdrawal—in other words, that the estate be reimbursed for that advertising?

A. So I understand.

Q. That was reimbursed?

A. I understand that it was. It did not come through my office. There is an appraisal charge of Thomas Cunningham has been made. [33]

Q. That particular appraisal charge was not paid by the Copra Oil, the \$640.80 was reimbursed, isn't that correct?

A. That I do not know.

Mr. Lynch: Will counsel stipulate it was?

Mr. Cahill: I will so stipulate.

Mr. Lynch: That is all.

Cross Examination

By Mr. Cahill:

Q. These dates you have read off of advertising in various newspapers were for what year?

A. 1946.

Q. All in 1946?

A. Yes, they were practically in January.

Q. Of that year?

A. Of that year.

Q. What advertising and in what newspapers have you had, in 1947, in reference to the proposed sale?

A. This proposed sale?

Q. Yes.

(Testimony of H. F. Metcalf)

A. None in regard to this proposed sale. In the Long Beach Press-Telegram I advertised for about a week or ten days. And as a result of that I got some calls; and as a possible result of that I have two offers in my pocket now. I got them this morning, by the way, which may come before his Honor later. [34]

Q. When was that advertising done in the Long Beach paper?

A. I guess six or eight months ago.

Q. In the year 1947? A. That is right.

Q. Is that advertising in the Long Beach paper you mentioned the only advertising that was done in reference to this property, in 1947?

A. It is all that I know of.

Q. You say you did get some results from that advertising? A. I said so.

Q. These offers you say you have in your pocket, when were they received?

A. This morning; I got them when I came to the office. I have been talking to Mr. Cahill for weeks. I had an offer here which he recently sent back and said, "I am unable to submit this offer, you must raise it."

The same thing happened with Procter & Gamble. He sent the offer and the check back and told them he couldn't submit it to the court with propriety. And I have an offer in my pocket of the oil rights on the 35 or 36 scattered lots, for the oil alone; and an offer of oil and property

(Testimony of H. F. Metcalf)

combined. I have been trading on that for nearly a month. I am trying to eliminate these crazy offers, to start with. They start trying to steal something. [35]

Q. These oil rights you refer to are on another property?
A. Yes.

Q. The lots are entirely different?

A. Entirely different from this; in no way comparable.

Q. The offers you received this morning are on what properties?

A. About 36 scattered lots under community oil lease, to the Bankline Oil Company.

Q. Neither of those offers are in reference to this six acres?

A. No, and they are not before his Honor yet. I am not trading with them. I think I can get a little better price.

Mr. Cahill: I would like to withdraw Mr. Metcalf. He just happened to be on the stand, and I propose to call him later. I have an order I would like to follow.

The Referee: All right.

Mr. Lynch: Will counsel stipulate that on Friday, at which time this matter was set for hearing, there was a public announcement made in the courtroom for a continuance of the hearing until this date?

Mr. Cahill: I was not there, but I understand it was made.

(Witness excused.) [36]

H. V. JOHNSON,

a witness produced by and on behalf of the Objector,
after being duly sworn, testified as follows:

Direct Examination

By Mr. Cahill:

Q. State your name, please.

A. H. V. Johnson.

Q. Where do you live?

A. I live at 2301 Ronda Vista Drive, and with my office at 437 South Hill Street.

Q. How long have you lived in Los Angeles County?

A. It will be 25 years this coming July.

Q. What is your business or occupation?

A. Appraiser.

Q. How long have you been so engaged?

A. All the time since I have been here, and about one third of the time for ten years, previous to coming here, in Denver, as an appraiser, for the State Insurance Adjuster.

Q. Is that a public official, a state official, in Denver?

A. Yes.

Q. Before coming here you were about three years an appraiser for that state official?

A. About ten years. I did that work outside of my regular work. [37]

Q. Your first employment in Los Angeles, important employment, was with whom?

A. My first important employment in the appraising profession in Los Angeles was with the Security-First National Bank.

Q. Of Los Angeles?

A. That is right.

(Testimony of H. V. Johnson)

Q. Security-First National Bank of Los Angeles?

A. Yes.

Q. In what capacity?

A. I did the appraisal for them in connection with the acquirement of the First National Bank, at that time, from around 25 to 28 bank buildings they purchased from the First National, that came in in that merger.

Q. How long were you engaged in that appraisal?

A. About ten or eleven months, I think.

Q. These were buildings scattered all over the City of Los Angeles, bank buildings?

A. And all over the city of Pasadena and various parts of the county—Montebello and Huntington Beach and Long Beach and Pasadena, and other places.

Q. Following that, what was your next activity in reference to appraisals?

A. I was employed just before that job was completed by the Production Building and Loan Association, as their chief appraiser. [38]

Q. Whose offices are where?

A. They have sold the company. I was with them six and a half years. The company has been merged with another company, on the death of its president, Mr. Moreland.

Q. Their offices were in Los Angeles?

A. Yes, at 523 South Spring Street.

Q. You were their chief appraiser for five years?

A. Six and a half years.

Q. Was that a building and loan association?

A. A building loan—no “and” in the word—“Building Loan Association.”

(Testimony of H. V. Johnson)

Q. Was that one of the state licensed institutions under the building loan law? A. It was.

Q. During the period of six and a half years you were so employed did you engage in other appraisals?

A. Excepting some special court work from time to time and the supervision of a couple of very fine residences that were being attempted to be built by the individuals upon which the Prudential had loaned money for their construction.

Q. Your employment following that six and a half year period was by whom?

A. About two or three years, independent appraisal work.

Q. For whom did you appraise during that time? [39]

A. Various individuals, and during that time I appraised five or six building and loan associations for the State Building and Loan Commissioner of California.

Q. Who was the commissioner at that time, do you recall his name?

A. No, I don't know his name.

Q. Mr. Joe Wilson was commissioner for quite a time. A. I don't remember.

Q. You don't recall the name of the commissioner, but you did appraise those complete building and loan associations?

A. I think it was five I appraised.

Q. And their assets in dollars were approximately what?

A. I would say around 50 or 60 million dollars.

Q. Where were their properties located?

A. All over the state, and some in Arizona, some in Nevada.

(Testimony of H. V. Johnson)

Q. And were they all real estate?

A. Yes, it was all real estate.

Q. Included therein were what types and classes of real estate?

A. There were many farms, some mountain ranches, some desert lands, some orange and other citrus groves, some business buildings, such as stores, hotels, apartment houses; and I believe there was one herd of white faced [40] cattle in that.

Q. How long were you so engaged?

A. I believe that was three and a half to four years.

Q. While you were doing that were you appraising for other institutions or companies?

A. Only by call. I was employed specially in certain cases for various banks, various lending institutions, to do certain appraising where there was possibly a questionable doubt with respect to the appraisal that had been turned in by the regular appraiser.

Q. Following that activity, the appraisal of building and loan associations, what was your next employment?

A. I was employed by the Title Guarantee and Trust Company as their chief appraiser.

Q. The Title Guarantee and Trust Company?

A. Yes.

Q. Its offices were where?

A. At the corner of 5th and Hill.

Q. How long were you so engaged?

A. About eleven years.

Q. That ended about what year?

A. I believe January three years ago, when they consolidated with the T. I., may be four years ago.

(Testimony of H. V. Johnson)

Q. That was over an eleven-year period?

A. Yes. [41]

Q. During that eleven years as chief appraiser for that company what type of property did you appraise?

A. Various types, consisting of residential properties on which they were lending money. The style of the company that was operated by the Fish Brothers, I don't remember that name—

Q. Was it the American Mortgage Company?

A. The American Mortgage Company. The Title Guarantee and Trust Company were trustees appointed by the court. And it was my duty to appraise those properties before the court would permit the sale, when they were liquidating the company.

And various orange groves, mountain lands, irrigation and water rights, checked the possibility of irrigation, the possibility of drilling wells upon dry land that they acquired through foreclosure; the cost of drilling these wells, and the machinery, the casing, and the electrical power to operate them, and so forth; to determine whether it would be profitable or not to irrigate certain land.

Q. Where were those operations located?

A. Between here and San Bernardino; one being the Norman Emplar property, and another north of Chino. They were located in Los Angeles County.

Q. Did you at that time appraise for others than the Title Guarantee and Trust Company?

A. Yes, in the last five or six years, I did work [42] for others, a few places, with permission—

(Testimony of H. V. Johnson)

Q. Name some of the other companies or institutions you appraised for during that period.

A. During that time I did considerable appraising free lancing, for individuals buying properties and selling. I did work for factories, such as the Emsco Company, the State Oil, the Hallett Manufacturing Company; and I did work for the Trustee of the Los Angeles Transit Corporation, which required a great portion of my time for two years. I started that job two years ago last May.

I believe there are still a few receiverships yet to appraise.

Q. You are testifying as to activities following the eleven-year period with the Title Mortgage Company?

A. Yes, the Transit Company is more recent. During this time I have appraised for many individuals, and seven months of that time I was, a portion of the time, I was in the FHA office. In fact, I was employed as the Chief FHA appraiser of the State of California, and helped to open this office and the other 59 offices in the state. After two months of employment with the FHA I was made Director of Personnel. And I qualified the various help at the other 59 offices in the state.

Q. This L.A. Transit, what kind of appraisal is that, appraisal of what?

A. It was an appraisal of all the land and various [43] properties that they owned that they disposed of after having purchased the company. They had much surplus land, running into many millions of dollars, 10 or 15 million dollars.

Mr. Lynch: I am willing to stipulate this witness has had wide and varied experience as an appraiser and generally qualified as an appraiser. I would be interested

(Testimony of H. V. Johnson)

in knowing whether or not he had actually appraised any property similar to the property here. Has he appraised any water front property?

The Referee: He has got all around it. Let's get him down in the oil well property.

Q. In this long period of appraisal you have testified appraising plants and factories. Have you appraised industrial properties, land or buildings? A. I have.

Q. Where?

A. In Long Beach, Inglewood, three or four in Los Angeles, one in San Bernardino.

Q. Have you had occasion to appraise during the war any airplane factories?

A. Since the war I will say I appraised the Ryan Plant, for the government, at San Diego.

Q. What is the full name of that?

A. Just the Ryan Plant.

Q. It is an airplane factory? [44]

A. Yes, it is.

Q. Is it a large industrial property?

A. Very large.

Q. Is that on the water front? A. Yes.

Q. You appraised both the land and buildings there?

A. Yes.

Q. For the United States Government?

A. Yes.

Q. When?

A. That was done in January, February, and March of 1946.

Q. You were engaged over that period of three months in doing that work? A. Yes.

(Testimony of H. V. Johnson)

Q. What has been your experience in industrial properties in the Los Angeles Industrial area?

A. I assisted in the appraisal of the Lockheed Plant at Burbank, the first of the year 1946.

Q. For whom? A. For the government.

Q. For the United States Government?

A. Yes.

Q. How long were you so engaged?

A. That was sandwiched in with the Ryan Plant. I put January, February, and March doing the Ryan Plant; and [45] so I helped, too, on Lockheed at Burbank.

Q. Industrial work, any industrial plants you have made appraisals of?

A. I believe I have named most of them, such as the Emsco, Allied Manufacturing, and Crescent Tool Company.

Q. Emsco is located at Long Beach? A. Yes.

Q. What is the size of that plant and grounds?

A. Around \$600,000. You mean in value?

Q. Yes. A. Around \$600,000.

Q. What acreage?

A. Approximately 23 acres, as I recall it.

Q. The other plants you have named, I am familiar with Emsco. You named Allied Manufacturing?

A. Allied Manufacturing, at Inglewood, consisted of about ten acres and buildings thereon. The Crescent Tool, it would be two acres, I believe; and the State Oil, I think that is about 10 or 11 acres.

Q. Where is that located?

A. That is at 23rd Street, I believe, that is where Washington and 23rd intersects. It is just almost south of Sears Roebuck.

(Testimony of H. V. Johnson)

Q. Are you familiar with the location of the Newport lands and Channel 3? A. Yes. [46]

Q. When did you see them first? A. January.

Mr. Lynch: May I ask a question before you go into this?

Mr. Cahill: Yes.

Mr. Lynch: Have you ever appraised any property on the water front of Long Beach and Los Angeles?

The Witness: None except the Newport property.

By Mr. Cahill:

Q. What was the date you named you first saw the Newport lands? A. January, 1946.

Q. Did you have occasion to make an appraisal at that time? A. Yes.

Q. And what portion of the Newport lands—there are two parcels, six acres and three acres. A. Yes.

Q. Did you appraise both parcels at that time?

A. No, I just appraised the six-acre parcel, not quite six acres, 5.9906, I believe.

Q. What was your appraisal? A. \$391,000.

Q. Have you had occasion since to examine the same property, the six-acre parcel? A. Yes.

Q. When did you make that examination? [47]

A. It was two weeks ago today, whatever date that would be.

Q. That is close enough. Was that for the purpose of making a re-appraisal? A. It was.

Q. Did you make a re-appraisal? A. Yes.

Q. What is your present opinion as to the fair market value of that six-acre parcel? A. \$419,571.00.

(Testimony of H. V. Johnson)

Q. Mr. Johnson, will you state what investigation you made in reference to these two appraisals? In other words, what facts did you obtain?

A. When I made the first appraisal I checked the Mason Report, which was at hand at that time, dated October 30, 1945.

Q. That was the report made by whom?

A. Thomas F. Mason.

Q. To whom?

A. To Mr. Metcalf, Trustee in Bankruptcy, *E. P. Newport Estate*, dated October 30, 1945.

Q. What was that report in reference to?

A. It is in reference to the value of the Newport property and it also sets forth 22 sales of property in the immediate neighborhood, that is, immediately adjacent to or near the Newport property. [48]

Q. You say you examined that report? A. Yes.

Q. What else did you examine?

A. I examined the property, the subject property particularly, and the oil wells thereon; and other sales of property in the immediate neighborhood. I examined the location of the wells on the Newport property, and the possibility of constructing a wharf thereon; also I checked the harbor report with respect to the depth of the various slips and channels; and the mean depth of low tide for larger vessels; oil, lumber, fishing, and so forth; the average widths of sheds in the harbor district; the widths of loading platforms and their construction, some having cement sea walls or retaining walls, and others constructed of empty piling; the number of feet of undeveloped land and the number of feet of developed land and for what purpose; the freight and passenger

(Testimony of H. V. Johnson)

loading for lumber and petroleum, fishing, miscellaneous; the kind of decks, such as timber, concrete, reinforced concrete, and piling decks; the total of municipal and of privately owned; the number of private wharves that are of concrete construction; the number of transit sheds owned by the City of Los Angeles; and the combined length of one-story and the two-story sheds; the general cargo terminal facilities since 1915, for various years; and the rank of this port report to others in the United States; and its relativity as an oil [49] port; the number of barrels shipped per year; the value of the oil shipments, and so forth; and also the accessibility of the subject property with respect to its location to the channel and also on the north side the Pacific Electric Railway running parallel to the northern boundary; and the possibility of constructing a warehouse and storage building, with an opportunity of putting in a spur from the present P.E. line on the street in front of the property immediate to and adjacent to all ships so that loading of freight could be handled directly from the ship to freight train and vice versa without duplication of loading.

Q. Was that conception of a warehouse that could be built with the present wells on the property?

A. Yes. I also prepared a map showing how it could be built, permitting this spur trackage immediately adjacent to the warehouse, and that would come immediately up to the warehouse and also leaving the property around the wells open for ingress and egress, and allowing the full 90 feet instead of allowing the required 15 feet; I allowed 25 by 90 for the laying down of roads. However, I understand they have developed a machine where that would be handled on. But I have laid out a plan where that could be handled just the same.

(Testimony of H. V. Johnson)

Q. Mr. Johnson, going to your qualifications, I neglected to ask you if you ever appraised an oil company?

[50] A. Yes, I have.

Q. Which one?

A. The Wilshire Oil Company I have appraised twice.

Q. Properties located where?

A. In Long Beach and out towards Santa Monica, and various places and various properties located in this vicinity.

Q. Was any industrial property in this appraisal?

A. Yes, I think there were perhaps 150 or 200 acres, all told, various spots, various lots, various improvements, oil tanks, and so forth.

Q. Do they have a refinery?

A. No, the refinery was moved to their Norwalk plant.

Q. You did not appraise their refinery?

A. I did not.

Q. Was that in dollars, just approximately, if you recall the appraisal?

A. It was many million, seven, eight, or ten million dollars, the property I appraised for them.

Q. In making this appraisal on the six acres, did you take into consideration sales of adjacent property?

A. Yes, I did.

Q. Were you present in this courtroom on the days when Mr. Higgins testified? A. I was.

Q. Do you recall he testified with reference to a [51] sale made, known as now the Spreckels' property?

A. Yes.

Q. Are you familiar with that property?

A. I have viewed the property recently; in fact, two weeks ago today.

(Testimony of H. V. Johnson)

Q. You have the record of sale there? A. Yes.

Q. Is that comparable property, in your opinion, to the Newport property?

A. In many respects it is, yes.

Q. Is it comparable as to the acreage?

A. It has 31.86 acres.

Q. And the Spreckels' parcel?

A. 35.688 acres of the Spreckels property; 31.86 is incorrect.

Q. What part of that 35 acres plus is water front property?

Mr. Lynch: It might facilitate the hearing and it would be a convenience to me if we used the map that is attached to Mr. Cunningham's appraisal. It shows that property and the other property.

Q. Yes. I am handing you the map which Mr. Lynch has just handed me and which he has taken from the report of Mr. Cunningham, appraisal report—

Mr. Cahill: Is that correct, Mr. Lynch?

Mr. Lynch: Yes. [52]

By Mr. Cahill:

Q. Do you find thereon the lands now referred to commonly as the Spreckels' purchase?

A. I believe that is the Patten and Davies Lumber Company. Let me see if I can find Spreckels' land here.

Mr. Cahill: It will be stipulated, Mr. Lynch, where the words "Patten and Davies Lumber Company" appear, that is one of the parcels that has been acquired by the Spreckels interest.

Mr. Lynch: Yes.

(Testimony of H. V. Johnson)

By Mr. Cahill:

Q. Did your investigation disclose Spreckels owned more than one parcel?

A. Patten-Blinn Lumber Company to J. D. and A. D. Spreckels, Pacific Electric Railroad Company to J. D. and A. D. Spreckels and General Petroleum.

Q. And the acreage?

A. The acreage, Patten-Blinn Lumber Company, 35.688 acres; and the Pacific Electric Railway Company transferred 1.66 acres; and the General Petroleum to J. D. Spreckels—I have oil rights—3.73 acres. I am not certain that is the exact amount of acreage or not, but that is the oil rights.

Q. I show you this map which, I think should be marked some way—

Mr. Cahill: Do you want to put this in as a Trustee's [53] Exhibit?

Mr. Lynch: Yes, I would just as soon.

The Referee. That will be number 5.

(Whereupon the document referred to was marked Trustee's Exhibit 5.)

By Mr. Cahill:

Q. Showing you Trustee's Exhibit 5 I will ask you if you find thereon the parcel acquired by the Spreckels interest from the Pacific Electric Railway Company.

A. Yes.

Q. Upon this map where the words appear "Patten and Davies Lumber Company," what is the parcel immediately adjacent thereto?

A. The Pacific Electric Railway Company parcel is immediately adjacent to the Patten-Davies Lumber Company parcel.

(Testimony of H. V. Johnson)

Q. That contains, according to your investigation of the acreage, what land?

A. The Pacific Electric Railway Company parcel is 1.66 acres, according to my records.

Q. Mr. Johnson, in making your appraisal, either the one of the \$391,000 or the one at \$419,000, did you appraise and include therein the oil rights?

A. No, I did not.

Q. Just before the recess I was questioning you as to the total of the Spreckels' purchase, as to what [54] portion of that, in your opinion, was water front property. Before you answer that question let me ask you this question: In your opinion, is the entire six acres water front property, the Newport property?

A. Yes, it is.

Q. In making the appraisal of the six acres did you segregate it in any way to arrive at the value?

A. Yes, I allowed 200 feet deep by 500 feet dockage frontage, as water front property; and appraise the rest of it at what might be called back land.

Q. You then treated the 500 foot frontage in the six acre parcel to a depth of 200 feet, as being strictly water front property? A. Yes.

Q. What appraisal did you put on that?

A. \$600 a front foot, or \$300,000.

Q. The land beyond that out to Seventh Street, what appraisal did you put on that? A. \$119,571.00.

Q. And upon what basis?

A. A dollar and fifty cents per square foot, upon 79,714 square feet of useable land for wharf purposes.

Q. And the second parcel, a piece of land 500 feet by what depth? A. 200 feet.

(Testimony of H. V. Johnson)

Q. You testified parcel number one— [55]

A. This other is irregular because of the fact that I made a map showing what square footage might be used for building outside of that reserved for the oil wells.

Q. Is it a larger or smaller piece than the 200 by 500, insofar as square footage is concerned?

A. I have not computed those separately.

Q. I will ask you that question at another time.

The Referee. Let me understand. You appraised the 500-foot depth, 200 feet, at \$600 a foot?

A. Front foot.

The Referee: Making \$300,000?

The Witness: Yes.

The Referee: The next item, what was the value you put on that?

The Witness: The next valuation was 79,714 square feet, at \$1.50 per square foot, or \$119,571.00.

The Referee: That makes \$419,000.00.

The Witness: That is correct.

The Referee: That is all.

Cross Examination

By Mr. Lynch:

Q. Mr. Johnson, did you examine the oil and gas lease that was made and entered into between the Trustee and others and the Universal Consolidated Oil and Gas Compnay?

A. No, I don't have a record of it.

Q. You never examined that to ascertain what [56] limitations upon the use of the surface rights of this property there were, did you?

(Testimony of H. V. Johnson)

A. No, I didn't. I have the report on the Long Beach Dock & Terminal Corporation; to whom that was made I was not informed, because the leases are not yet signed. I doubt if that applies to the one that you just asked about.

Q. I will state it does not. You testified on direct examination that one of the things you examined in order to ascertain or determine what appraisal to give to this property was the Thomas F. Mason report, made to Mr. Metcalf. I show you a copy of that report made by Mr. Mason to Mr. Metcalf, and ask you if that is the report to which you referred. A. It is.

Q. You have a copy of that report in your possession?

A. Yes, I do.

Q. Do you, by any chance, have the signed copy?

A. I don't know whether it is a signed copy or not. I will have to check for that.

Mr. Lynch: Yes, he has a signed copy. We will offer in evidence the signed copy that Mr. Johnson has in his possession.

Mr. Cahill: No objection.

The Referee: That is Trustee's number 7.

(Whereupon the document referred to was marked Trustee's [57] Exhibit 7.)

The Court: We will take a recess to 2:00 o'clock.

(Whereupon a recess was taken to 2:00 o'clock p.m.) [58]

Los Angeles, California, Monday, November 24, 1947,
2:00 P. M.

The Referee: You may proceed.

H. V. JOHNSON,

called as a witness by and on behalf of the Objector,
having been previously duly sworn, resumed the stand
and testified further as follows:

Cross-Examination (Continued)

By Mr. Lynch:

Q. Mr. Johnson, what did the Spreckels property sell
for, do you know?

A. The Spreckels property sold on March 11, 1946,
for \$925,000, cash.

Q. \$925,000 cash? A. Yes.

Q. That property has how much footage along Chan-
nel No. 2? A. With your permission I will—

Q. I don't care what map you use.

A. According to this map, it has 1391.67 feet of water
footage on Channel 2.

Q. That property also has a concrete bulkhead, does
it not? A. Yes, it does.

Q. Showing you this aerial photograph—

Mr. Lynch: The Trustee offers this aerial photograph
as next in order. [59]

The Referee: That will be Trustee's 8.

(Whereupon the photograph referred to was marked
Trustee's Exhibit 8.)

(Testimony of H. V. Johnson)

By Mr. Lynch:

Q. Showing you Trustee's Exhibit 8, which is an aerial photograph, will you with your pencil mark what is known as the Spreckels property, if you can locate it.

A. Here (indicating).

Q. Will you locate on that same aerial photograph the Newport property?

A. Here (indicating), as near as I am able to determine it. It would be that one right there (indicating).

Q. That Newport property is adjacent to the property which is known as the Southern Pacific property?

A. Yes.

Q. The Southern Pacific property has a concrete bulkhead or sea wall?

A. Yes.

Q. The Newport property does not?

A. Right.

Q. The aerial photograph shows heavier erosion on the Newport property?

A. Yes.

Q. Do you know how much area is now left in that property that is not under water? [60]

A. I have not computed that.

Q. As a matter of fact, there is exactly 1.63 acres that has been eroded and is under water?

A. In comparison to the rest of the land, I would accept that as approximately correct.

Q. Approximately 4.36 acres under water in that one parcel?

A. That looks like it would be about right.

(Testimony of H. V. Johnson)

Q. Now, Mr. Johnson, do you know, have you any idea what a sea wall or bulkhead would cost along that property?

A. Not without figuring it. But it would cost around \$22.00 a cubic yard for concrete work, forms, and so forth.

However, I am not trying to argue with you, Mr. Lynch. But I do not think a sea wall would be the practical thing. I think piling, if used—

Q. I call your attention to what has been along the Southern Pacific property. What has been there?

A. That is where the sea wall has been built.

Q. Along Channel 3 there is a sea wall, so far as the subject property is concerned?

A. That is correct.

Q. And that is also true as to Channel 2 on the Spreckels property?

A. Yes. [61]

Q. In other words, there has been built in that area and along the frontage of a great portion of the property on both Channel 2 and Channel 3 what we refer to as a bulkhead or sea wall?

A. That is correct.

Q. So that assuming the people who built those there have adopted a good practice in the industry, you would say sea walls are a common thing in that area?

A. They are a common thing; and also a driving of pile is comparatively—

Q. You estimate constructing the sea wall for how much a cubic yard?

A. \$22.00 a yard for concrete and forms.

Q. How much for the Channel, have you any idea?

A. No, I don't, because of the fact that I would have to know how far the dirt would have to be hauled.

(Testimony of H. V. Johnson)

Q. Considering the present condition of that property, with the erosion and exposure to additional erosion, you still believe your estimate of \$600 a front foot for a depth of 200 feet is fair? A. I do.

Q. In addition to the sales that are reflected in the Mason report which you stated you examined, and the Spreckels sale to which you have testified, what other sales of comparable property in the area have you considered?

A. The Atchison, Topeka & Santa Fe Railroad Company [62] from Long Beach Dock & Terminal Company.

Q. When was that? A. January 14, 1946.

Q. January 14, 1946? A. Yes.

Q. What property was that sale?

A. I am sorry, I did not hear you.

Q. Of what property was that sale, what property was sold?

A. The Atchison, Topeka & Santa Fe acquired from Long Beach Dock & Terminal Company property under condemnation proceedings.

Q. Under condemnation proceedings? A. Yes.

Q. That is an entirely different thing. Are there any voluntary sales of any property?

A. There is the Santa Fe from Advance Realty.

Q. Santa Fe from Advance Realty? A. Yes.

Q. When was that?

A. Well, that was at the east end of Channel number 2. But it has no dock frontage whatsoever.

Q. At the east end of Channel 2?

A. Yes, perhaps 400 feet east of Channel number 2, approximately where it would start in there.

(Testimony of H. V. Johnson)

Q. How much was sold at that time in that parcel? [63]

A. 22 thousand square feet, 22,844 square feet.

Q. When was that sale? A. November 6, 1945.

Q. November 6, 1945? A. That is right.

Q. What was the price?

A. \$32,751.09 per acre.

Q. \$32,751.09 per acre? A. Yes.

Q. That is for an acre?

A. The total consideration of those three parcels was \$82,500.

Q. Three parcels sold at the same time, were they?

A. That is correct.

Q. How much area was there in the three parcels?

A. Parcel number one had .855 acres; number two had 1.140 acres; number three had .524 acres, or a total of 2.519 acres.

Q. 2.519? A. Yes.

Q. That total consideration was what?

A. \$82,500.00.

Q. Did that include all the mineral rights?

A. That was the surface only.

Q. The surface only?

A. Let me read this. I think that is correct. No [64] oil rights below the 50-foot level passed in this deed.

Q. There was a reservation of all mineral and oil rights below the 50-foot level?

A. That would be my understanding.

Q. Did the deed also reserve any right of drilling, do you know?

A. I don't have the record of all the terms of the deed.

(Testimony of H. V. Johnson)

Q. You do not know whether any reservation, then, was made for drilling operations?

A. No, I don't. That is not reflected in this report.

Q. Are there any other sales other than the ones you have testified to that you considered, when you considered the Mason report? A. Yes, there are.

Q. All right, what other sales?

A. George V. Giaconi Company, to Advance Realty.

Q. To Advance Realty? A. Yes.

Q. When was that sale? A. April 4, 1945.

Q. What parcel was concerned in that sale?

A. That was on the north side of Channel 2, slightly west of the, or westerly, rather, from the east—it would be 400 feet westerly from the east end of Channel number 2. [65]

Q. And does that have Channel number 2 frontage?

A. Yes, it did.

Q. How big a parcel was it? A. 1.32 acres.

Q. 1.32 acres? A. Yes.

Q. How much frontage was there along number 2 Channel? A. 300 feet.

Q. What was the price for that parcel?

A. That was subject to a deed of trust, recorded of record, securing note of \$17,000, with approximately an unpaid balance of \$14,000.

My record says also this was not a true sale but was a forced sale to cover a certain indebtedness.

Q. Sold to satisfy that trust deed?

A. Yes, sold to satisfy that trust deed of \$17,000.

(Testimony of H. V. Johnson)

Q. Any other sales that you considered that were not in the Mason report to which you have not heretofore testified?

A. There was the T. H. Breslin sale to George Breslin and Marguerite Breslin, and others.

Q. That was a sale from Mr. Breslin or purchased by Breslin?

A. Breslin, deceased, to George Breslin and Marguerite Breslin. [66]

Q. It was a purchase from the estate of the deceased father to the two sons and daughter? A. Yes.

Q. How much property was involved in that?

A. 3.06 acres.

Q. When was that sale—never mind. That is still a matter of record. What was the price?

A. \$80,000.

Q. Are there any other sales that you considered other than the ones to which you testified and those reported to Mason?

A. Long Beach Dock & Terminal Company to Hodgson-Greene-Haldeman Shipbuilding Company.

Q. When was that sale?

A. I don't have the date of that recorded in this report.

Q. How much area was involved there?

A. There were three separate parcels in that.

Q. All sold in one transaction?

A. Apparently so.

Q. What is the combined area there?

A. 3.6 acres, 1.75 acres, 4.35 acres.

(Testimony of H. V. Johnson)

Q. What was the price?

A. This was a lease, I believe. Let me see. This is a lease instead of a sale. I am sorry.

Mr. Lynch: I move that it be stricken then. [67]

The Referee: The motion to strike is granted.

By Mr. Lynch:

Q. Any other sales?

A. Certain lots on Cerritos slough.

Q. Lots on Cerritos slough?

A. Yes, those lots on Cerritos slough.

Q. What lots?

A. Consisting of six lots, not continuous. They have no direct frontage, certain lots on Cerritos slough, condemnation proceedings.

Q. I am not interested in condemnation proceedings. Those were not voluntary sales?

A. Those were acquired by the City of Los Angeles.

Q. Under condemnation? A. Yes.

Q. Any other sales?

A. None, that is all I have.

Q. Mr. Johnson, can you point out any property that has been sold and to which you have testified or is included in the Mason report that was sold for \$600 a front foot?

A. I have not computed the sale value per front foot on the various parcels.

Q. So far as you know, the Tom Mason report correctly sets forth the price obtained and the area involved in the sales therein mentioned, is that correct? [68]

A. There is only one, the only one I would question is the 3.07 acres in connection with sale number four, Los Angeles Dock & Terminal Company.

(Testimony of H. V. Johnson)

Q. Sale number four? A. That is right.

Q. That is the sale by Los Angeles Dock & Terminal Company to the City of Long Beach?

A. Yes, 3.29 acres. I have 3.07 acres. Let me see, in connection with sale number four—I don't have my Mason report. I believe it was offered as an exhibit.

Q. The Mason report shows that at \$31,459.00 per acre, does it not?

A. My copy of Mason's report is on file as an exhibit. I don't have it, and I don't have a copy.

Q. I will hand it to you.

A. Yes, Mason uses 3.29 acres, and I had that 3.07 acres.

Q. No material change in the price per acre, was it?

A. No, that is right.

Mr. Lynch: That is all.

By Mr. Iverson:

Q. How many times have you seen this Newport property? A. Four times.

Q. Over how long a period of time?

A. Since about, I think I saw it first about December, [69] 1945. And at that time I just started the appraisal of the Ryan Plant, in San Diego. And I drove by and viewed it for about an hour. And I made another examination in January, 1946, the early part of January, 1946; and two weeks ago today.

I have seen it five times. I saw it once during the summer—I don't know just what date—during the summer this year, July or August.

Q. So that before approximately two years ago you were entirely unfamiliar with this property, is that correct?

A. That is correct.

(Testimony of H. V. Johnson)

Q. Had you made appraisals of other property in that same vicinity before that time?

A. Not harbor properties. I had appraised several properties in Long Beach, in the vicinity, of different nature.

Q. This is the only harbor property you have ever appraised, is that correct?

A. With respect to water frontage it is.

Q. The purpose of your appraisal approximately two years ago was work done for Mr. Newport in relation to a plan he had in refinancing, was it not?

A. That is correct.

Q. Mr. Johnson, why do you place a different value on the property today than in January, 1946? [70]

A. Because of the fact I believe property, particularly, of this kind has enhanced in value to that amount. And privately owned harbor property is limited, practically no more there.

Q. Do you know any sales that have been made during the last two years which would indicate the sales price of these properties have increased any in that period of time?

A. I believe, referring to the Mason report, there has been a general increase of properties all through the years.

Q. You take that information from the Mason report and not from actual sales?

A. The Mason report information, with the sales.

Q. The Mason report was submitted about two years ago, was it not?

A. That is correct, and basing the increase upon the increases as he shows it, there would be about \$25,000 or \$26,000 increase of this property in the two years.

(Testimony of H. V. Johnson)

Q. You say you started out with the Mason report which was January, of 1946.

The Referee: The Mason report is dated October 30, 1945.

Mr. Iverson: I will stand corrected on the date of the report. October of 1945 being the date.

By Mr. Iverson:

Q. You say that the appraised value of this property [71] has increased, from January, 1946, from a value of \$331,000 to today \$419,000. On what grounds do you base that increase in price?

A. Upon the fact that all real estate, in this community especially, has taken about that rate of increase—25 to 30 per cent—and according to Mason's report it took just about the same increase in the last two years. That is, a comparative increase in the last few years.

Q. Are you familiar with the sale made by Brooks to the City of Long Beach, on Channel 3, on December 31, 1941? A. No, I am not.

Q. Are you familiar with the sale of Long Beach Dock & Terminal Company to the City of Long Beach, on Channel 3, on July 12, 1941? A. No.

Q. Are you familiar with the sale of the State Building and Loan Commissioner to California Sea Food Company on December 9, 1941, on Channel 2?

A. Let me ask where that would be on Channel 2.

Q. I will show it to you on the chart here. Right at the end of Channel number 2.

A. 4.35 acres?

Q. No, 8.17 acres?

A. On the north side of the Channel? [72]

(Testimony of H. V. Johnson)

Q. On the southeast end of the Channel, right on the corner of Channel number 2. A. 7.35 acres.

Q. Sold December 9, 1941, by the State Building and Loan Commissioner to the California Sea Food Company. Are you familiar with that sale?

A. No, I am not.

Mr. Iverson: That is all.

Redirect Examination

By Mr. Cahill:

Q. The property counsel asked you concerning last, is that water front property, that 7 acres owned by the Curtis Packing Company?

A. It has just a little corner of water front on it, possibly 60 to 70 feet.

Q. As a part of the 7 acres?

A. Just a little corner of it, the Channel runs into just a little corner of it.

Q. Are you familiar with the Southern Pacific property adjoining the Newport property, on Channel 3? I mean generally familiar.

A. The S.P. property right of way on the north side?

Q. No, the acreage the Southern Pacific Company has there?

A. My map shows Graham Brothers own one side, R. E. Allen, Trustee, on the other. [73]

Q. I am referring to this land Mr. Higgins testified concerning.

A. Yes, I am quite familiar with that.

Q. In your opinion, is that land comparable to the Newport six acres?

A. Yes, I would think it is quite comparable.

(Testimony of H. V. Johnson)

Q. Which has the greater or lesser value?

A. The water frontage on it proportionally to the acreage, I would say it is a very comparable value to the Newport property.

Q. Did you also in addition to your consideration of the Newport report, dated October 30, 1945, consider the Higgins report? A. Yes, I did.

Q. I don't have the date of that. Do you have the date of the Higgins report?

A. I have only a portion of the Higgins report in my file. And it is not dated.

Q. Counsel asked you on cross examination concerning the fact that your original appraisal was made in aid of a proposed plan of reorganization, at least, a loan for such a plan to the Bankrupt, and you have answered that is true. A. Yes.

Q. Have you been aiding the Bankrupt in obtaining such a loan? [74] A. I have.

Q. And from whom?

A. The California Western States Life Insurance, of Sacramento, for whom I have in the last few years been their chief appraiser, for Southern California, and yet.

Q. This parcel of land, this six acres, was appraised by you, together with all other parcels of land owned by the Bankrupt estate? A. Yes.

Q. For a loan in what sum?

A. Approximately \$400,000, or a minimum of \$400,000.

(Testimony of H. V. Johnson)

Q. Court and counsel might be interested in knowing what progress you made in obtaining such a loan?

A. Just at the time I was negotiating for the loan Mr. Paul Wright, the treasurer and vice president of California Western States Life Insurance Company, came down and looked over this property. And he verbally said the loan looks all right. He said, "Go ahead, make your application, we will appraise this property, and I have no doubt existing in my mind but we will make a loan for the \$400,000 minimum."

And about that time this came up. And I believe he has written that the confirmation of this loan depended upon the outcome of this case. [75]

And if I may, in the same breath, correct the Mason report, the date of the Blinn Lumber Company sale was March 11, 1946.

Going back to this loan, I have every reason to believe we can secure a loan, according to Mr. Newport's report to me, to settle with his creditors.

Mr. Lynch: I object to that and ask that it be stricken. That is a pure conclusion of Mr. Johnson.

The Referee: \$400,000 would not take care of the creditors. He owes the bank \$300,000 and quite a lot of unsecured creditors, attorneys fees. I would say it would be nearer \$600,000.

When did you begin to negotiate for this new refinancing, how long ago? I have heard about it for the last two years. Tell me when you started working on it.

The Witness: Serving my memory as best as I can, it was possibly April or May of 1946, when we actually began negotiations for the loan. It might have been a couple of months later than that.

(Testimony of H. V. Johnson)

The Referee: You took from May, 1946, to November, 1947, to find out from this man that he probably would make the loan for \$400,000?

The Witness: No, he told me—Mr. Wright came down, by telephone request, just at that time, and went over these properties. We took him over the property.

The Referee: Did you bring him to the 230 odd acres? [76]

The Witness: Yes.

The Referee: And on these properties he would loan only \$400,000?

The Witness: That is correct.

Q. By Mr. Cahill: Including also the oil rights, I assume?

A. I am not sure as to that, whether the oil rights were included in this or not. I doubt very much if they were, but they may have been.

The Referee: This six-acre property has a frontage, a water frontage of 500 feet. Wouldn't it be worth more per front foot if there were 600 or 700 feet?

The Witness: Yes.

The Referee: In other words, as I understand the situation, 500 feet is hardly adequate to fit and to serve the average size vessel, it would have to come in nose first?

The Witness: My understanding is 500 will serve, but I understand there is a working arrangement on the 250 feet just east of this, making available 750 feet for docking.

The Referee: That is providing the owner of the 250 feet, which is in Trusteeship, by a man by the name of R. E. Allen—

(Testimony of H. V. Johnson)

The Witness: No, I have in mind, reference to the Graham Brothers frontage there on the east of Mr. Newport's. [77]

Mr. Lynch: This estate has no working agreement with Graham Brothers.

By Mr. Cahill:

Q. 500 feet is sufficient to dock the average vessel that comes in there?

A. Yes, 500 feet is adequate.

The Referee: Some reference has been made to other sales having been made, and that you reach the conclusion that the frontage is inadequate, take 200 feet, is that sufficient?

The Witness: It is not.

The Referee: 300?

The Witness: No, I think nothing less than 500 or 450 feet, for different length vessels; 450 feet up to some of the larger ones, 500.

By Mr. Cahill:

Q. Apart from the sale of the Patten-Blinn lands there has not been a sale on either of these channels of water front property for over 20 years of frontage sufficient to dock a vessel?

A. That is entirely true.

Q. A single sale? A. Yes.

Q. Isn't it true as to that sale, a very great part of the acreage is not water front property, referring to Spreckels property? [78]

A. A larger portion of the properties have no water frontage whatever.

Mr. Lynch: I object, the court has before it the map there showing the dimensions of the property, and for

(Testimony of H. V. Johnson)

this witness to attempt to say 200 feet for water frontage, or 300 or 500 feet, is speculation of the rankest kind.

By Mr. Cahill: I will ask him—

Q. Do you know, Mr. Johnson, what is ordinarily and uniformly regarded as water front property, in reference to depth?

A. I don't believe I quite understand that question.

Q. When you use the term "water front property"—we have used it repeatedly—what do you mean by it? Do you mean property having a frontage that can go back—to what depth?

A. I mean adequate water front property is, at least, 200 feet deep and must have a channel sufficiently wide and deep to accommodate some of the larger boats, as Channel 3 does, which is from 35 to 40 or 45 feet deep.

Q. Then, you do not regard anything beyond 300 feet as water front property?

A. No, I would take a piece 200 feet as what we term back land.

Q. Would not have, in your opinion, use as water front property? [79]

A. It might have a sub-use, because it was directly adjacent on the south side of Seventh Street to the Electric Pacific Railway which could run a spur to this back land, to the water front property, and it would have a very definite use then.

Q. These occasions you visited this property you observed oil wells on the property? A. Yes.

Q. Do you know at the time you made these appraisals that there were oil wells thereon, producing oil?

A. Yes.

(Testimony of H. V. Johnson)

Q. Do you know the name of the lessee?

A. I think I have that somewhere in the record. I believe Mr. Newport told me the name of the lessee.

Q. Did you know there was an outstanding oil and gas lease on the property? A. Yes.

Q. That it had a number of years to run?

A. Yes.

Q. Did you take those facts into consideration in making your appraisals?

A. I did. And I did not base my valuation principally of the land upon which the oil wells are sufficient land for ingress and egress to them; I didn't figure in my computation; I left that to the wells alone.

Q. Have you testified previously — I think you have— [80] counsel asked a question that your appraisal is predicated strictly upon surface rights and not upon the value of the oil that may be in them.

A. That is correct.

Mr. Cahill: That is all.

Mr. Lynch: You testified you considered only 200 feet back from the water front as water front property. As a matter of fact, if a property has five, six, seven, or eight hundred feet depth it is more valuable property than 200 foot depth?

The Witness: Yes. That same answer I gave to the court.

By Mr. Hess:

Q. Do you know of any offerings of any water front property since March, 1946?

A. I am not familiar with any offerings. I am familiar with some leases down there upon which a valuation

(Testimony of H. V. Johnson)

was established to determine the lease and also the terms and conditions of the Long Beach Dock & Terminal lease.

Q. I take it from your answer you do not know of any water front property that is for sale except this parcel?

A. No, I don't. I know the Breslin property. It is not on the market. He will not sell it.

Q. Have you investigated to see if there is any property for sale or has been in the last year? [81]

Mr. Lynch: I object to that as wholly immaterial, whether there is or not any property for sale.

The Referee: I do not think that tends to establish a fair market value. They might hold it for sentimental reasons. The objection is sustained.

By Mr. Hess:

Q. What, in your opinion, has been the effect of the close of the war upon any change in value in water front property?

A. I am not quite hearing you.

Q. What, in your opinion, is the effect of the close of the war upon the water front values at Wilmington?

Mr. Lynch: I object to that as being wholly immaterial.

The Referee: It is quite speculative, highly conjectural. The objection is sustained. Let's get down to actual conditions.

By Mr. Hess:

Q. In your opinion, has there been an increase in valuations of water front property since the close of the war? A. In my opinion, there has, yes.

Q. Give your reasons for it.

Mr. Lynch: I object to that as being wholly immaterial, has already been asked and answered.

(Testimony of H. V. Johnson)

The Referee: It is a matter of common knowledge and information that land has been increasing. The objection [82] is sustained.

By Mr. Hess:

Q. I think you said the increase in value since December, 1945, was about 30 per cent. Did you say that?

A. Pretty close to 30, between 25 and 30.

Q. Have you given a 30 per cent higher valuation upon the water front property as of today, compared with December, 1945?

A. I would not say upon the water front property alone, but upon the property as a whole, because of the extreme demand for warehouse storage space. And based upon the information that I received, attorney McCarthy, who is also attorney and secretary for the Long Beach Dock & Terminal Company, informed me that they had a tremendous shortage of warehouse surface land in that particular vicinity, and the amount they had recently leased was upon a 15 year lease.

The Referee: He has answered the question.

By Mr. Hess:

Q. I note you gave a valuation of \$1.50 per square foot on the back end of the property, of the Newport Company, which amounts to \$65,000 an acre. Did you make the comparison between the values per front foot of the back end of the Newport property with the back end of the Spreckels property? What I am getting at is whether you would appraise the back end of the Spreckels property, [83] back of the 200-foot line, at the same valuation of \$1.50 per square foot.

Mr. Lynch: I object to that as immaterial.

The Referee: The objection is sustained.

Mr. Hess: That is all.

(Witness excused.)

ROY G. MEAD,

a witness produced by and on behalf of the Objector, after being duly sworn, testified as follows:

Direct Examination

By Mr. Cahill:

Q. What is your name? A. Roy G. Mead.

Q. Where do you live? A. Glendale, California.

Q. What is your business or occupation?

A. Consulting engineer and geologist.

Q. How long have you been so engaged?

A. For the past 26 or 27 years.

Q. And your school of training in your profession was what?

A. Honor graduate University of Arizona in geology and mining engineering.

Q. And where have you practiced your profession?

A. Practically every state in the west, but particularly in California. [84]

Q. Are you a member of any societies of geology or engineering?

A. Yes, I am a member of the American Institute of Mining and Metallurgical Engineers, also a member of the American Association of Petroleum Geologists.

Q. Are you also a civil engineer?

A. I am a registered engineer in the State of California.

Q. Have you had occasion to become familiar with oil field practice, particularly, in the Los Angeles basin?

A. Yes, for the past 25 years the major part of my work has been on oil geology in the various fields in California, and particularly, in the Los Angeles basin.

Q. Are you familiar with the practice in producing oil wells? A. I am.

(Testimony of Roy G. Mead)

Q. Are you familiar with the practice in reference to the owner of the land upon which the oil wells are located?

A. Yes, a large part of my work has consisted of appraising oil properties for the operator and the land owner and in doing that work it is necessary to be familiar with royalty interests, as well as the operator's interest.

Q. And will you state to the court the names of some [85] local people you might know that have employed you during these years in such work and such practice?

Mr. Lynch: I will stipulate as to his qualifications. I think the questions counsel is about to propound to this witness are wholly immaterial to this hearing, anyway. I will stipulate to his qualifications.

Mr. Cahill: I would rather not accept the stipulation without putting in some statement of what his experience has been.

By Mr. Cahill:

Q. Will you state briefly the name of some of the oil companies, particularly?

A. I have made two separate appraisals at different periods of the Wilshire Oil Company, which included all their oil properties, refineries, pipe lines, terminals, and so forth.

I have made an appraisal of the Joseph B. Dabney Estate, a large part of which consisted of oil leases, oil royalties; and he was also an operator in the Long Beach field.

I did appraisal for the George Getty Company and for Land Owners and Royalty interests; the Eckert and Lloyd properties, in the Ventura oil fields; and the Lloyd properties, at Ventura.

(Testimony of Roy G. Mead)

Q. In the Lloyd case did you have occasion to appraise the value of royalties?

A. Yes, the oil royalties in the Lloyd and Hartman. [86]

Q. You also represented the United States of America?

A. Yes, I was employed as field examiner by the United States Land Office a number of years; and quite recently I was, within the last two or three years, I was employed by the United States Government on a case involving oil prices, in the Kettleman Hills oil field. I was also employed about a year ago by the State, representing the State in their royalty interests in a case involving the Owen's Lake soda deposits.

Q. When you say the State, is that the State of California? A. Yes.

Q. Have you had occasion to appraise oil properties and interests therein for inheritance tax purposes?

A. Yes, quite a percentage of my work consists of appraising properties for inheritance tax purposes, both for the royalty owner and the operator.

Q. Have you been employed by any of the major oil companies in this area?

A. No, not recently. I was employed by the Associated Oil Company a number of years ago, in the Long Beach oil fields.

Q. They are regarded as a major company, the Associated? A. That is one of the majors. [87]

Q. And, rather than put it in the usual form of a strictly hypothetical question of great length that none of us might clearly have in mind, I will state some facts to you and ask your opinion, as an expert, as to what would

(Testimony of Roy G. Mead)

be the usual and appropriate course of procedure under those facts.

The matter before the court at this time concerns the sale of six acres of land. I guess you are familiar with the location of the land from what you have heard in the courtroom.

A. Yes, I have seen the land.

Q. You have seen the land?

A. Not recently, but I am familiar with that particular area.

Q. And you are also advised that there is an oil and gas lease on that six acres, to the Universal Oil Company, made in 1938, and running for an indefinite period, but not to exceed, in any event, 25 years. You are so advised?

A. I understand the lease does not terminate, but can run for 25 years? I am not quite clear.

Q. The lease is a 30-day lease, but its terms are continuous as long thereafter as oil and gas are productively produced, but not in any event exceeding 25 years.

The sale here proposes to sell the surface rights to the proposed buyer, but to permit the seller, the Trustee in [88] Bankruptcy, to retain his right under the present oil and gas lease, but not otherwise.

Mr. Lynch: Unless you add something else, your question is not correct. The rest is the sale of all the property, including all mineral rights, saving only, however, to the Trustee the right under this lease, only any minerals, oil, whatever it may be, go with this sale, except such as we are entitled to produce under the lease.

Mr. Cahill: That is correct. That is what I was endeavoring to state to the witness. I think you put it in better order. That the proposed sale does propose to

(Testimony of Roy G. Mead)

convey all the mineral rights in the six acres, reserving, however, to the Trustee such rights as he may have as the lessor under the present gas and oil lease to the Universal Consolidated Oil.

Having those facts in mind, I will ask you if, in your opinion, such a proposed sale with such reservations is regarded as sound practice on the part of the land owner.

Mr. Lynch: I object to the question on the grounds it is not a subject for expert testimony. That is number one.

Number two, it is wholly immaterial in this particular proceeding, there being no effort here to sell any oil royalty or rights under that lease. The only sale that is contemplated is the property, subject to the lease. And whether it is or not good practice is wholly immaterial in [89] this proceeding.

The Referee: I will let him answer. Maybe he can tell me something I have not heard before. When you say "good practice" do you mean by that that is good business?

Mr. Cahill: Yes, the things commonly done by land-owners.

The Referee: I do not think that is permissible, because you have a bankruptcy proceeding, which commonly means liquidation and not operation. The whole intent of bankruptcy is to liquidate and pay the creditors. But if you want him to tell me whether that is the business practice, I will listen to your answer.

Mr. Cahill: It will be so limited as to this question.

A. As I understand the question and the explanation, answering the question, I would say it would not be, because the oil interest would be jeopardized and the owner of the property, who now has the property, would

(Testimony of Roy G. Mead)

not get the oil rights after the expiration of the present lease.

Mr. Lynch: We concede that.

The Referee: Yes, I wouldn't argue on that. You understand, under this proposed sale, this bankrupt estate is to receive whatever royalty there is at the rate of 35 per cent that is produced by this Universal Consolidated Oil Company, up to 1963?

The Witness: I understand that.

The Referee: They are not selling that. We are trying [90] to hold onto that.

Mr. Lynch: When the lease terminates for any reason—by virtue of time or failure to produce in commercial quantities—and under those circumstances it is quit claimed back by Universal Consolidated Oil, the rights of the Trustee in this estate cease.

There is no dispute on that.

By Mr. Cahill:

Q. That is the fact. That being the fact, what, in your opinion, is the danger of the Trustee in Bankruptcy in selling this asset in this manner?

A. He would lose the protection that would run to the landowner in the event the lease was terminated.

Mr. Lynch: There is no question about that.

The Witness: Therefore, the value would be lower.

By Mr. Cahill:

Q. Because of that factor is it true that those who would purchase, and that a sale not having been made—the proposed sale—the interest in the oil from the Trustee, will they pay, in your opinion, a lesser figure if the sale is consummated on that basis?

(Testimony of Roy G. Mead)

Mr. Lynch: No sale involved. What we get for the oil is fixed by the terms of the lease. We get a certain percentage. The lease provides that will be sold at market. The question of whether we sell this property does not affect the price we get for the oil. [91]

The Referee: The question resolves itself into this: Would a change in ownership of the land affect the value of the lease? Is that what you want him to answer?

Mr. Cahill: I will put it this way.

Q. The estate has today certain interests—it is the owner of minerals, subject to a certain executed lease. If those minerals were offered on the market today they would bring a price, which we will indicate as X price. Now, query: If this sale is made so that the seller, the Trustee in Bankruptcy, no longer owns the minerals in place, but he simply owns an interest under an oil and gas lease, will the buyer who would have today paid X price be only willing to pay then a day after the sale takes place, Y price, presumably a much lower price?

Mr. Lynch: We are not concerned with any rights under the lease. We are reserving the rights under the lease.

The Referee: He says if the land ownership passes from A to B, would that affect the sale price of the lease?

Mr. Lynch: Is that what you are after, the sale price under the lease?

Mr. Cahill: We have today much more than rights under a lease. Tomorrow the sale goes through. We will then only have an interest under a lease and no longer the double interest we have today. That difference in value—in other words, do we appreciate an asset the Trustee [92] has today, but may make a sale—

(Testimony of Roy G. Mead)

The Referee: He can answer.

The Witness: Yes, I would say he would. It is a case where you are a direct royalty owner and after the sale there would be an over-riding royalty which would be affected by the old lease.

By Mr. Cahill:

Q. In your opinion, would his selling price, over-riding royalty, be much lower than the interest we have today?

A. Yes.

Q. Would you have any idea what percentage, approximately?

A. Well, that would vary with conditions. It might be the same in some cases, and in other cases it might be 50 per cent lower. In order to tell exactly what that would be you would have to make an appraisal of the oil and ascertain how much oil would be recovered after the lease was terminated. I would say it would be, at least, 25 per cent less.

Q. In your opinion, the value the Trustee has today would be depreciated about 25 per cent through making this sale in the manner that it is proposed to be made with the reservation only as to our interest under the lease?

A. That is just an opinion, but it could be verified [93] by an appraisal of the oil rights.

Q. Have you found in your experience that oil royalty buyers will pay less, substantially less, where what they are buying is only an over-riding royalty under a lease?

A. No, they don't pay as much landowner royalty where lower rights run, when the land is more desirable than the over-riding royalty. That depends upon the terms of the contract.

(Testimony of Roy G. Mead)

Q. The reasons why—

A. The landowner royalty runs with the property. If a lease is terminated the landowner still has the mineral rights, and he can either operate the property himself or he can lease again. In the case of over-riding royalty, when the lease terminates, that mineral right is lost and ceases to be.

Mr. Cahill: That is all.

Cross Examination

By Mr. Lynch:

Q. What you mean is if this sale goes through this estate's royalty interest would be less valuable because it carried only with it the right to produce under this particular lease?

A. That is exactly what I mean.

Q. In other words, if the sale is made and the rights of any future development taken away, then [94] this protection under this particular lease has less value than it would if it carried with it future production?

A. That is true, anyone that bought this royalty today before the sale would have no rights to any future development.

Q. He would have only rights under this lease, and without that lease he would have no right in any other lease on the land?

A. That is correct.

Mr. Lynch: That is something that has been conceded all along.

The Referee: Have you any other questions?

(Testimony of Roy G. Mead)

Redirect Examination

By Mr. Cahill:

Q. Are you familiar with the various producing horizons on the six-acre tract?

A. In a way. I have not made a study of oil horizons in this area, but there are several producing horizons in the Wilmington area which extends under all the properties.

Mr. Lynch: This witness has not made an examination. Mr. Carrey made one and his report in this record. I am perfectly willing to stipulate that that may be considered a part of this record.

Mr. Cahill: When was that? [95]

Mr. Lynch: I don't know, but it is a written report.

Mr. Nelson: Will you stipulate that all the reports—

Mr. Lynch: I will stipulate that may be considered as part of the record.

Mr. Cahill: I am willing to accept the stipulation. You will recall Mr. Carry gave testimony in which he gave his opinion as to the possibility of production as to these layers from the Ford Zone, but the report was made as of a time when another and thick producing horizon on the adjacent land had not been discovered, 237 Zone. So that if this witness has any information in respect to 237 Zone I would like to have it.

Mr. Lynch: He has stated he has not made any study of it. Counsel has a letter from Mr. Carry recently written, and I am willing to stipulate that letter may be introduced, and if Mr. Carrey was called he would so testify.

Mr. Cahill: Counsel is reading a letter. And I will state that Mr. Carrey attended as a witness the day this

meeting was first called, sat in the spectators' section, and did not announce to Mr. Lynch or myself that he was in court. And he could not attend last Friday or today. So that Mr. Lynch offered, if Mr. Carrey would write a letter stating his loans had been to Mr. Metcalf, which are substantially the same matters to which Mr. Metcalf has been giving his testimony; and [96] Mr. Lynch would stipulate what Mr. Carrey said could be considered in evidence, and has written such a letter which, I believe, did set forth pretty much all that Mr. Carrey would testify to if he was here in reference to the policy of making a sale of lands on this sort of a basis. It does not set forth testimony I would like to obtain from Mr. Carrey, in time, as to the reports which the Trustee made that because of the supposed shale, to being unable to obtain the oils that may underlie the land in the Ford Zone, the 237 Zone. That is one of the matters discussed in Mr. Carrey's report. That is limited only to the Ford Zone. So because of the continuances I am a little bit oppressed and by the failure of having Mr. Carrey here at this time.

The Referee: I will be here the balance of the year. I will give you all the time you want.

Mr. Cahill: Mr. Nelson indicates that he thinks it does not sufficiently cover the subject and that we would be unsafe in closing our case just relying on the letter alone.

Mr. Lynch: We have a very practical problem in this case. We are willing to stipulate to this letter. Mr. Carrey said when he left that he could not be back until sometime after the first week in December. And we have a time limit on this sale. And I assume there may be a review. And I think it is very necessary, [97]

essential to go ahead. And I am trying to facilitate this by offering to accept Mr. Carrey's letter and also Mr. Carrey's report which is already a matter of record in this court.

The Referee: That is all right so far as I am concerned.

Mr. Nelson: Mr. Carrey's letter was quite acceptable insofar as it goes, deals with this question that has been under discussion just now. That is the effect on the rights of the landowner if the land is sold without reservation, only of the royalties payable under the lease. This land carries with it all of the mineral substances under it except such as may be taken by the present lessee, Universal Consolidated, during the remaining life of the lease or until its forfeiture or abandonment.

Mr. Carrey has testified in this matter before, as a geologist, and he is the advisor of the Trustee which has been through the proceeding. I think he is better informed than anyone about the conditions here, geologically and otherwise.

For example, four years ago, in a hearing in this court, there was testimony about the present value of the royalties under this lease and there was testimony on the part of some of the witnesses produced by the Security First National Bank, that the present value then of [98] this royalty interest of the bankrupt was two hundred odd thousand dollars. I think the fact is since that time the Trustee has taken, by that royalty interest, a sum largely in excess of \$200,000, and at the present rate the royalty revenue to the Trustee is running, I am told, as high as it was then.

There are two zones, theoretically, below the present zones.

The Referee: They have not been found yet.

Mr. Nelson: No, but they have been found within 1200 or 1400 feet.

The Referee: How soon can you get him here? I am not going to let this thing drag along.

Mr. Lynch: Mr. Carrey will not be back until the second week in December, according to his statement when he left.

Mr. Nelson, I call your attention to one thing you would probably stipulate to. And that is a well was drilled into the bed zone, and was found dry.

Mr. Nelson: We will say we are told about that well, that that drill penetrated a zone in one of the wells, a poor producer, but probably not at a spot where it should be expected to reach the zone.

Mr. Lynch: Will you stipulate they will testify, if called, that they did drill a well into what they believed to be the bed zone, to a depth of 5918 feet. [99]

Mr. Nelson: I will accept the stipulation that they drilled to a depth they thought was into the bed zone; but further, they did not drill into the lower or the so-called 237 Zone, which may or may not exist under this property but which, if it does, may make it very valuable.

We may sell this property for \$198,000 and realize a net of about \$165,000 or \$170,000, after all expenses are paid. We depreciate the value of the royalty interests. When this lease is limited here by abandonment or anything else, there is nothing more we can do with it.

Universal may wish to elect to go down to that other zone. I don't know whether this lease provides to go

deeper. In other words, if any more oil is discovered on that land—

Mr. Lynch: Yes, if Universal goes down in its option for any further oil we get the benefit of that under this lease.

Mr. Nelson: While I am not suggesting this situation, it could be done in the same situation. Universal finds it convenient to get rid of that by throwing up its lease, and at some later date—

Mr. Lynch: If they do something and it assumes dishonesty, it could be set aside.

Mr. Nelson: Suppose they elected to abandon it?

Mr. Lynch: I think it could be set aside as a fraud. [100]

Mr. Nelson: It could happen a new lease be made by someone else, and very valuable rights taken away.

Mr. Lynch: I will concede that is possible, but not probable.

Mr. Cahill: Mr. Newport informs me he has been in communication with Mr. Carrey and that he can be here, apparently, not this week, but next week.

Mr. Lynch: I asked him when he left he was going to be back next week. And he said he would not be back until the second week in December.

Mr. Cahill: That is this week?

Mr. Lynch: The first week in December.

Mr. Cahill: One thing I have in mind, listening to this dialogue between Lynch and Nelson—I guess it is

a dialogue—Mr. Carrey has showed me the location of the well we are discussing, and he says the location shows definitely, shows definite indications of oil.

The Referee: I used to live in Arizona and the miners down there used to say one man could see as far down in the ground as another. They may have been in error. You have got to dig and dig and see what you get. I do not want to continue this matter. I want to give you my ruling, one way or another, this week, not later than the end of the week, because of having a time limit on this and, undoubtedly, it will be reviewed. And if the Judge does not agree with me it [101] will find its way to the Circuit Court.

Mr. Lynch: We have 60 days from October 27th.

The Referee: I haven't a lot of time.

Mr. Cahill: Mr. Newport says he believes it is possible to get Mr. Carrey by Friday.

The Referee: We will take a short recess.

(A short recess was taken.)

The Referee: Have you presented all the evidence you want me to hear, on both sides?

Mr. Cahill: No, your Honor.

The Referee: Then it will have to go over to another date. I think we will continue it to next Wednesday morning.

Mr. Iverson: If it is agreeable with the other parties I would like to call Mr. Mason out of order.

The Referee: All right.

THOMAS F. MASON,

a witness produced by and on behalf of certain creditors,
after being duly sworn, testified as follows:

Direct Examination

By Mr. Iverson:

Q. State your name? A. Thomas F. Mason.

Q. What is your occupation?

A. Realtor-appraiser.

Q. How long have you been in that business? [102]

A. Since June, 1923.

Q. What has been your business experience in appraising real property?

A. Since June, 1923. Prior to entering the real estate business in June, 1923, I was in charge of all rail operations in the Wilmington section of the Los Angeles Harbor, the rail activities of the Southern Pacific, the Pacific Electric, Union Pacific, and the Los Angeles Harbor Belt Line.

Since June 1923 I have appraised property for individuals, and corporations, city and county of Los Angeles; State of California; the Division of Parks and Highways; the United States Army; the United States Navy.

And among the properties I have appraised, excluding FHA, HOLC, Federal Home Loan Bank, Veterans Welfare and numerous building and loan associations and financial institutions, covering residential properties within the area of San Luis Obispo on the north, San Bernardino on the east, Laguna Beach on the south, and Avalon on the west, I will confine the rest of my qualifications to harbor matters and beach properties.

I have appraised all the privately owned beach property of the city holdings of the City of Los Angeles,

(Testimony of Thomas F. Mason)

the City of Santa Monica, the City of Manhattan Beach, [103] and the City of Redondo Beach; from the Orange County line to Portuguese Bend and the northerly part of San Pedro; I have appraised property San Pedro acquired for a park, which included the water front.

I have appraised the entire holdings of Los Angeles Harbor department, of Los Angeles Harbor, in 1926.

I have appraised the property owned by the Union Pacific on the south side of Cerritos Channel, in the Long Beach area, just east of the Henry Ford Avenue, or what was known as the Budger Avenue-Bosque Bridge,

I appraised the property acquired for the site of the Consolidated Ship Yards, at Wilmington. And I appraised the land occupied by the Consolidated Ship Yards, in its negotiations between the Maritime Commission and the Harbor.

I appraised the right of way acquired for the Maritime Commission's railroad lease, and operated by the Pacific Electric Company, operated on Anaheim Boulevard to Cal-Ship, on Terminal Island.

I appraised the field acquired and used by the Navy during the war, which is east of Terminal Island.

The Referee: I think this gentleman is pretty well qualified. He has covered almost all southern California. I think that is sufficient unless you want him to go ahead.

Mr. Iverson: No, I wanted to satisfy your Honor he [104] was qualified.

The Referee: I am pretty well satisfied.

Are you familiar with the property which is the subject of this sale?

(Testimony of Thomas F. Mason)

The Witness: Yes, 5.9909 acres owned by the F. P. Newport property, known as the F. P. Newport property, three blocks easterly of the Southern Pacific-owned land there and just westerly of the Graham Brothers' land.

By Mr. Iverson:

Q. Have you some opinion as to its fair market value?

A. I have.

Q. What, in your opinion, is the fair market value of that parcel?

A. In my opinion, the fair market value of the surface rights only of this property under discussion here is \$196,350.00, as of the date of this trial.

Q. Can you express to this court a reason for your opinion for that value?

A. The reason, one of the reasons, for my opinion of this value is my knowledge of the Long Beach Harbor area in the transactions that have taken place in the last 26 years, beginning with the option given to the City of Long Beach, about 1922, for 240 some acres owned by the L. A. Dock & Terminal, and submitted [105] to the citizens of Long Beach, and not voted; and a subsequent sale of 21 acres of that to what was known as the Pacific Dock & Terminal Company, headed up by T. T. C. Gregory, of San Francisco, and others; and their disposing of all but approximately 100 acres of the land acquired in 1919; the flood waters coming down the river had filled in the channel to the point that just prior to the acquisition by the Pacific Dock & Terminal Company, the channels were practically filled; one or two spots near the turning basis that had about eight feet of water. The rest was practically submerged tide lands at higher tide, might be some portions of the land exposed; the

(Testimony of Thomas F. Mason)

construction of the flood control channel to the east of the harbor and east of the subject property; the dredging of the harbor subsequent to the Pacific Dock Terminal's purchase, to a mean depth of 45 feet; filling in Channel 1, creating additional land, and dredging of Channels 2 and 3 of the turning basin, and the entrance to the harbor on an approach seaward from the harbor; sales to Exeter Coal Yard people, on the north side of Channel 2; and a sale to Patten-Blinn Company, and subsequent re-sale, or option, to the Santa Fe Railway, at approximately two years ago. That was never exercised. Then, the subsequent sale to the Spreckels people, which deal included the acquisition of the Pacific Electric right [106] of way that extended westerly and diagonally through the property, almost through the property; and the sale to Rio Grande Oil Company, from C. H. Goodhew and Paul Walker.

And the sale to Merritt, Chapman-Scott, on 3, subsequently sold by them to Richfield Oil Company. This joins Graham Brothers east of the subject property.

The sale from the Pacific Dock & Terminal Company, of 49 acres, which was subsequently sold; ten acres to Procter & Gamble, about 1938; and about 1940 they sold two more acres to Procter & Gamble, easterly of their then holdings.

The analysis of the sale to the Spreckels interests would reflect and as a check, confirm the opinion of the value that I have expressed; and the fact that the harbor properties, generally speaking, and considering the 500-foot depth to be the principal part, are the most valuable part of water frontage, which is confirmed by the rates charged by the harbor district in the leasing of vacant water

(Testimony of Thomas F. Mason)

frontage; and the rate charged for that area remaining to the rear lands, a ratio of about—if one frontage is 100 per cent, the rear land is 70 per cent less valuable, on the rates charged per front foot per annum.

The size of the property as having 500 feet water front, which is adequate for a given number of ships [107] operating in the harbor—lumber schooners and ships of that nature—but larger vessels require additional length.

The fact that the property is at right angles with the water front, 521.9 feet deep, being laid out diagonally, and a spur track taking off from the Pacific Electric, from the east to the west, you can get on the property with a minimum of loss.

It is my opinion if the concrete tanks were not along the easterly line of the property a spur track could be taken off from the east and parallel the easterly line of the property to the water front; then to bring in spur tracks, along any dock that might be on the front, there would be the main loss because of the diagonal approach of the westerly and easterly line. The concrete tank would mean that the tank would have to be moved westerly. I call it a concrete tank. It is in conjunction with the oil operations on the property.

The various sales, the various leases, made at the harbor for some time past—and I am well acquainted with them and have knowledge of the prices paid—all those things enter into my consideration. And my consideration is the opinion expressed.

Q. This value you have placed there, is that for surface rights only or does that include oil rights?

A. I believe I stated it was for surface rights only. [108]

(Testimony of Thomas F. Mason)

Q. Are you familiar with the fact that the property is eroded on the channel side?

A. Yes, the erosion on the channel side—well, I have not had a survey made or scaled it from the map. Estimating it from observation, I would say 150 to 160 feet approximately, average, from the bulkhead line back to the high land.

Q. To place the property in first class useable condition what work would be necessary?

A. It would be necessary to build, at least, a minimum of bulkhead and fill the land. By a minimum bulkhead I don't mean the type of bulkhead in around the Southern Pacific properties, when the filling operations took place, at the time, the last of 1929 or early 1930. That was a wooden bulkhead anchored to pile and dolphins, sealed this along the front.

As near as I can find out from checking and my experience, I think the minimum bulkhead would be one composed of about 15 tons of riprap to the lineal foot, with the concrete sea wall on top of it. That runs about three quarters of a yard of concrete per foot.

Q. Have you made a study of the cost of the work that would be necessary?

A. The bulkhead I have just mentioned would cost approximately \$105.00 a foot. The type of bulkhead the City of Long Beach is putting in now is considerably more [109] than that. I think the main bulkhead would suffice to hold the land in back of it, support it for any structural use, railroad tracks and whatnot that would be put on it.

(Testimony of Thomas F. Mason)

Q. What would that cost, putting in the bulkhead?

A. \$105.00 per foot for 50 feet. That would be \$52,500.00.

Q. Then would it also be necessary to fill in back of that?

A. It would be necessary to fill in back of the bulkhead, yes.

Q. Have you made a study of the cost of that?

A. Just a rough estimate. Scaled from the map, without taking into consideration or having surveys made, the water in front of the Newport property originally dredged to a 45 foot depth, soundings now, I think, run somewhere from 35 to 40 feet.

If you build a bulkhead there and go back 150 to 160 feet back of the bulkhead line, where the erosion has to take place, it would be conservative to estimate that the fill required would be from zero on the north side to, say, 20 feet at the water's edge, to striking a minimum average, or an average of ten feet. An average of ten feet for 150 or 160 feet deep, 500 feet long, would be somewhere between 27,000 and 30,000 cubic yards of fill. And that fill could be secured from one or two [110] sources. And the last job of that kind for a comparable size in the Los Angeles Harbor was a fill at eighty cents per cubic yard.

A dry fill, if placed in there, would settle, being loose dirt. And there would be a loss of about twenty percent, which means you would have to have twenty percent more yardage of dry fill than wet fill. And, twenty percent of eighty would be about ninety-six cents a yard for dry fill. And to hold a job, for a small job of that

(Testimony of Thomas F. Mason)

kind, if dredged, there would be the dredging and leveling off process after the dredging has been filled.

Q. What would that be for the entire job of filling in, you estimated?

A. \$52,500.00, say 30,000 yards filled at a dollar would be \$82,500.

Mr. Iverson: That is all.

Cross-Examination

By Mr. Cahill:

Q. To use any of the other lands on either of these channels for the same purpose wouldn't you have to do the same things in many of them before using them, say, put in improvements?

A. You would have to put in some type of bulkhead, and I stated the minimum. You would have to do that. All areas in there are not eroded. Originally [111] they were bulkheaded. From Channel 2 to Channel 3 still has the old wooden bulkhead that was put in to retain the fill when the channel was dredged as it was then. If it is used for shipping purposes, with docks and railroad tracks, it would be necessary to put in some type of bulkhead. And I have tried to outline what I think is the minimum bulkhead. The City of Los Angeles and the City of Long Beach put in much more costly bulkheads.

Q. Is it practical to use piling instead of bulkheads?

A. You put in bulkheads to retain the soil. You cannot build this pier on piling. As a matter of fact, that is the way they are all built, either concrete, piling, or otherwise, except on jobs like the Navy did at San Diego, where they built a concrete sea wall the full depth of the harbor and built the docks on that, on shoreward.

(Testimony of Thomas F. Mason)

Q. My point was, it appears to me the problem you have outlined to get the land in condition for buildings is a common problem to the various lands there.

A. It is. I was merely answering your question.

Q. I want to ask you this question: You spoke about a ship 500 feet long. Are you familiar with the ships that use these channels, the length of them?

A. Yes, without getting too specific without my [112] records. I was in charge of rail operation in the Wilmington area some five years prior to the last of 1923. No cargo ships coming at that time 535 feet long. A lot of lumber boats are 350 or 400 feet, and it would be ample space to use them. A good number of cargo boats are of that dimension, and some are larger.

Q. Have you any idea what percentage of the total that come there and that would use these channels are 500 feet or over?

A. I wouldn't want to guess. I could check it for you.

Q. Is it a small percentage, medium, or large?

A. No, in the—this statement is based on my experience in 1920 and 1923.

All the American-Hawaiian ships that were docking at Pier A were about 535, or larger. The L. A. Steamship Company ran about 50-50. The Pacific Steamship line ran about 40 percent of the larger ones to 60 percent of the smaller ones. I would say that the percentage rate would be somewhere between 40 and 50 percent, as I recall.

(Testimony of Thomas F. Mason)

Q. About half of the vessels that would come in there could dock on the 500 feet and the other half could not, roughly?

A. That is correct. Our 535, in order to dock there, our larger boats, it was common practice after [113] docks were built to put shore points on both sides, to hold income, to work jointly in matters of that kind.

Q. You said you considered various leases in determining your appraisals, in determining leases down there did you consider a recent lease made by Los Angeles Dock & Terminal Company to an undisclosed lessee, where they appraised the land at one dollar and fifty cents a foot and set the rental accordingly?

A. I am not familiar with it.

Q. Do you know Mr. McCarthy, the attorney for the Dock & Terminal Company, who used to be attorney for the Harbor Department, I guess it is?

A. I met Mr. McCarthy sometime. I mean I presume it is the same man.

Q. If you knew that that landowner and the Pacific Dock & Terminal Company had made such a lease within the last few weeks, where the rental was set on an appraisal of a dollar and fifty cents a square foot, would that change your opinion here?

A. It might influence my opinion. I would want to know all the terms and conditions surrounding it and the purpose, what it is being used for, and so forth. I will

(Testimony of Thomas F. Mason)

not say that it would not influence me one way or another. I would want to know all the facts about it.

Q. Is it not true that in recent years that, [114] apart from the S. P. piece of land, there have been no sales of water front at all?

A. That is true. The Spreckels property, what we have been referring to as the Spreckels property, has been on the market and advertised in endeavoring to find a purchaser, for approximately ten years. That is, a couple or three years prior to the war and subsequent thereto it has been on the market for one figure or another, since shortly after Patten-Blinn decided that they were not going to utilize it as a lumber yard.

Q. A large parcel, 35 acres?

A. The map shows 35.6 something acres, including the Pacific Electric Railway right of way, which bisected the area for years.

Q. Isn't part of that, at least, a mile from Channel No. 2?

A. I don't think so, but I will check. Taking the piece of property which is almost triangular in shape and taking the end farthest distant, you can get on a triangle, on a direct line. It is more or less at right angles with Channel 2. It is about 1500 feet to the farthest distant point from the water.

Q. You stated you claim a depth of 500 feet is still water front property. Is there any universal ruling on that? [115]

(Testimony of Thomas F. Mason)

A. I said it was generally accepted, 500 feet was the maximum depth for the highest priced portion of this water frontage. And that is largely based on the rates, for example, of the harbor departments, where they charge five cents per square foot for the water frontage back to 500 feet, and three and a half cents per square foot, per annum, in the rear thereof. It happens if the harbor department owns some land that does not front on the water and there is an intervening strip privately owned property of two or three hundred feet, then they charge three and a half cents per square foot for that back land.

Q. That schedule seems rather arbitrary for our own purpose and convenience—

A. No, those factors are established in Los Angeles and San Diego harbors, that the idea is for all general use. If you take a typical case, for harbor use, for its highest and best use, you would want sixty feet for the open wharf, with two tracks so that cargo could be loaded from and to the ship with high line. You would want at least—a 100-foot wide shed would be rather narrow, preferably 125 to 150 feet; you would want another 10 to 15 feet for the loading platform; you would want sufficient low land for approximately four house tracks to supply the freight house shed with trackage and additional space [116] for trucks, and a roadway down which the minimum depth you could use to an advantage for that type of shipping, which would be approximately 300 feet.

(Testimony of Thomas F. Mason)

Q. That would indicate that your scale rule as to what we call the S. P. portion, that you have a total depth of 1500 feet and approximately, at the maximum point today, about 1000 feet would be land in depth that is not water front property in this parcel?

A. That is at the apex of the triangle, yes.

Q. I will ask you this question also. You are a real estate man? A. I am, yes.

Q. Didn't you bring to this Trustee in Bankruptcy, in December, 1945, an offer, as a broker, on this particular parcel of ground?

A. I did. And that is, it has been referred to as an appraisal report, Tom Mason's data. That was more or less a brief submitted to the Trustee, at his request, of the number of sales that had taken place in the area at the time.

Q. You obtained at that time a bid from the Copra Oil & Meal Company of \$198,000?

A. That is right.

Q. That was in December, 1945?

A. Approximately, right around the latter part [117] of 1944.

Q. Are you of the opinion there has been no increase in the value in the elapsed time of almost two years?

A. At that time it was my opinion that the property was worth \$184,000, and I recommended to my client,

(Testimony of Thomas F. Mason)

so recommended to him, after considerable negotiation; and their desire to have a place of their own for the handling of the Copra Meal, there were conferences and what not, and they raised it to \$198,800.00. I believe the present prospective purchase came in with an offer to the Referee a little above, in the neighborhood of my first offer, and which was my opinion of value of \$184,000.

Q. As I recall, the offer made in 1945 had been accepted, the Trustee petitioned to pay you a fee as a real estate broker for making the sale.

A. That is not true. I have not received five cents.

Q. I asked the question, whether the Trustee had not petitioned, hadn't he agreed to pay a fee in that deal?

A. I expect to get the usual commission.

The Referee: There has never been a sale, never has once a Trustee in Bankruptcy sold anything except on a broker's commission. That is customary in this court. [118]

Mr. Cahill: That is all.

Mr. Lynch: The Trustee has nothing more at this time.

The Referee: We will recess to 10:00 o'clock a. m., Wednesday.

(Whereupon a recess was taken to the hour of 10:00 o'clock, Wednesday, November 26, 1947.) [119]

Los Angeles, California, November 26, 1947.

10:00 A. M.

Mr. Cahill: We do not have Mr. Carrey here, and that being true, I would like to place into the record the data set forth in a letter from Mr. Carrey to me which counsel will stipulate to that Mr. Carrey will have testified.

The Referee: Had he been present.

Mr. Cahill: Should he have appeared at this time.

The Referee: All right.

Mr. Cahill: I think I will have to read it into the record. The data I am about to read is contained in a letter of Mr. A. A. Carrey.

Mr. Lynch: In order to save time why don't you introduce it and we will stipulate that it may be written up by the reporter?

The Referee: I would like to hear it now and know what it is.

Mr. Lynch: All right.

The Referee: It may influence me one way or the other.

Mr. Cahill: Mr. A. A. Carrey, Petroleum Geologist and Engineer, 529 East Roosevelt Road, Long Beach, California. The letter is dated November 17, 1947:

"Mr. L. M. Cahill, Attorney-at-Law,

"606 South Hill Street,

"Los Angeles, California

"Dear Mr. Cahill:

"The petition of H. F. Metcalf, Trustee, for [120a] the sale to the Procter & Gamble Manufacturing Company of certain properties located within the

Wilmington oil field has been brought to my attention. Said property is owned by the F. P. Newport Corporation and is at present leased and operated for oil by the Universal Consolidated Oil Company.

"I have been requested to study said petition and render any opinions that I might have insofar as said sale might affect the present and future economical operations of the wells now located on the property.

"I shall only attempt to base my opinion upon good oil field practice and the matter of operating leases. By way of qualification I might state that I have been actively interested in the oil business for 25 years, as a consulting petroleum geologist and engineer for 20 years, and more particularly I have been the field agent for the trustee, Mr. H. F. Metcalf, in connection with this particular property for approximately nine years."

"As a result of that experience I have had occasion to study the original lease many times and feel that I am familiar with the operations insofar as they affect this particular property. [121]

"From a study of paragraph B of the above-mentioned fee, it appears to me that the sale of this property would change the present landowners' position in that the Newport Corporation would be the owner of a so-called 'over-riding royalty,' rather than as present they are the owners of the mineral interest. Said sale would in a sense convert present oil and gas lease into a restrictive lease, in which case the termination period would be of prime importance. Such a restricted lease might preclude

the possibility of the Newport Corporation operating the wells themselves some time in the future.

“In explanation of the above statement, it will undoubtedly come to pass some time in the future that the present operating company might feel that it is no longer profitable for them to operate under said lease. In such cases it has been found that the fee owner can often operate such leases where an operating company, which has to pay high royalties, cannot do so.

“It is my opinion that if this sale is made that the present landowner, the F. P. Newport Corporation, will suffer a decided loss in the sale value of their landowner's interest. It has been my experience that there are few buyers [122] for over-riding royalties, as most royalty buyers prefer mineral interests. In each case where I have observed sales, it has been my experience that over-riding royalties always bring considerably smaller prices than landowner's royalties or mineral deeds.

“I believe that the most serious effect that the sale would have upon the F. P. Newport Corporation is in the matter of the termination clause in the present lease. If such a sale is made the F. P. Newport Corporation has no power to prevent the present operating company from terminating said lease, and as a result of such action the F. P. Newport Corporation could in no way continue the oil operations.

“In answer to paragraphs C and D, I do not believe that the changes in the physical equipment on the leases particularly work any hardships on an operating company. It may to some extent limit

their freedom in the matter of remodeling work and the handling of oils from the various wells, but I do not believe it will be serious enough to cause too great inconvenience.

“Hoping the above information will be of some assistance in clearing up some of the points in connection with said sale, I remain, [123]

“Very truly yours,

(Signed) “A. A. Carrey.”

I will ask counsel to stipulate and I offer to stipulate that if Mr. Carey were called at this time, sworn and testified as a witness, that he would testify as set forth in this letter.

Mr. Lynch: I so stipulate.

The Referee: That is the man who has been supervising the oil there month by month, isn't it?

Mr. Cahill: Yes, your Honor.

The Referee: And for whom I have counter-signed checks for \$240?

Mr. Cahill: Yes, your Honor. His reports are on file here and they have been for many years.

The Referee: I recall.

Mr. Cahill: He is the geologist who rendered the services.

The Referee: I was just curious to know whether it was the same Mr. Carrey.

Mr. Cahill: Yes, he is, your Honor.

Now, having in mind what Mr. Carrey said with reference to the lease, I think it would be very appropriate to ask for a stipulation by counsel concerning the lease which provides in paragraph 13 thereof as follows:—

Mr. Lynch: Let's not stipulate on that, Mr. Cahill. I wanted to introduce this lease anyway and I think probably [124] this is the proper time to do it. This lease was made and entered into by and between H. F. Metcalf as trustee in bankruptcy and the Universal Consolidated Oil Company, introduced by reference, copy of the lease being attached to the petition filed in this matter in these proceedings on the 14th day of January 1938 by H. F. Metcalf as trustee in bankruptcy and the Security-First National Bank of Los Angeles, the petition being for approval and authority to execute said lease, and a copy is attached to that petition.

Mr. Cahill: That is agreeable.

Mr. Lynch: As exhibit next in order. Then if you want to comment on it it is all right.

Mr. Cahill: I might call the attention of the court to the fact that the lease contains 21 paragraphs and that there are one or two paragraphs which are extremely pertinent to the matter under discussion; one of which is paragraph 13 composed of two sentences entitled "Uses of Premises by Lessors."

"The Lessors and each of them shall have the right to gauge all production hereunder and to use the surface of the demised premises, (where they have the right now to use the same, respectively), for any purpose or purposes not inconsistent with the rights of the Lessee hereunder, and to such an extent as will not unreasonably interfere with such rights of the Lessee hereunder, in- [125] cluding the right to develop or to cause to be developed any sand or zone in the demised premises, the right to develop which has been lost by the Lessee. The Lessee agrees to conduct its operations hereunder so as to

interfere as little with such use by the Lessors, respectively, as is consistent with the economical operation of the property for the development and production of oil, gas and other hydrocarbon substances therefrom and thereon."

Paragraph 15, if your Honor please, is entitled "Forfeiture," and it is composed of apparently one long sentence, as follows:

"In the event of any breach of any of the covenants, terms or conditions of this lease by the Lessee, other than one of those mentioned in Paragraph 29 hereof, and the failure of the Lessee to commence in good faith to remedy the same within 30 days after written notice from the owner or owners of the demised premises so to do, or if the Lessee shall fail to diligently prosecute its efforts until such default has been fully remedied, then, at the option of such owner or owners, this lease shall forthwith cease and determine, and all rights of the *Less* herein and hereunder shall be at an end; provided, however, that notwithstanding [126] any such forfeiture of this lease for any cause other than one of those mentioned in subparagraphs (a) and (b) of Paragraph 29 hereof the Lessee shall have the right to retain any and all wells then being drilled or which may then be producing oil and/or gas in paying quantities, together with the aforesaid easements and appurtenances of said wells, in so far as reasonably necessary for the operation thereof, and sufficient land surrounding each well for the operation thereof. The land so retained shall be subject to all of the terms and conditions of this lease."

I also wish to refer your Honor to the clause with reference to the surrender of the premises which is paragraph 21, reading as follows:

“Upon the expiration of this lease or its sooner termination in whole or in part, the Lessee shall surrender the (163) possession of the demised premises or the affected portion thereof to the Lessors, and shall deliver or cause to be delivered to the Lessors a good and sufficient reconveyance thereof. Within 30 days after such expiration or termination, the Lessee shall, (subject to the rights and privileges granted the Lessee and the Lessors, respectively, hereunder), [127] remove from such premises as to which this lease is so terminated, all of its rigs, machinery and other property, and shall fill all sump holes and other excavations made by it.

“Right to Quitclaim.

“At any time after the Lessee has drilled the first or any subsequent well upon said demised premises to the depth required by Paragraph 3 hereof, if such well or wells be incapable of producing in paying quantities, the Lessee may quitclaim the demised premises, or the parcel thereof upon which such well may have been drilled to the Lessors, and thereafter the obligations of the Lessee hereunder shall cease as to the premises or parcel so quitclaimed; provided further, however, that the quitclaiming of either of said parcels without the other shall have the same effect and be accompanied by the same results as if the same had been forfeited under Paragraph 15 hereof, but the quitclaiming of the entire premises, whether accomplished by one or two deeds and whether accomplished at the same or different times,

shall operate to deprive the Lessee of all of its rights hereunder, except the right to remove its equipment as provided in Paragraph 14 hereof, subject to the rights of the owner or owners as in said last mentioned paragraph set forth.” [128]

Those are the matters I desire to direct your Honor’s particular attention *ot*, and in view of the fact that there are exceptions mentioned in paragraph 15 as to certain matters in paragraph 29, while it is not important we should read it. Paragraph 29 is entitled “Forfeiture for Failure to Drill or Pay Royalty.”

“(29) (a) If the actual drilling of the first well herein provided for has not been commenced within the time herein first provided for the commencement thereof, (unless excused from so doing under Paragraph 5 hereof), this lease shall, at the option of the Lessors, automatically cease and terminate, unless prior to such default the time for the commencement of the drilling of such well shall have been extended by the written consent of the Lessors herein. No such extension shall be granted without the payment in advance by the Lessee of an additional sum of money to be mutually agreed upon and paid at the time of the granting of any such extension, nor shall anything in this paragraph contained be construed as giving to the Lessee any right to demand or receive any such extension.

“(b) The failure to pay any rental or royalty payable by the Lessee hereunder within the time

herein provided therefor and for 10 days after receipt [129] of written notice of such default given by the Lessors herein shall operate, at the option of the Lessors, to forthwith terminate all of the rights of the Lessee hereunder in and to the demised premises or the portion thereof as to which such default may exist, unless such payment has been excused or prevented by operation of law or by the courts in the enforcement thereof."

Paragraph (c), your Honor, says that "Time is of the essence," and so forth and so on. It is a long paragraph but I don't think it is particularly pertinent to the matters that I have to call your Honor's attention to.

In the absence of Mr. Carrey I am going to do the best I can and recall Mr. Mead to testify on a different matter other than the matter he testified to the other day.

The Referee: All right.

Mr. Lynch: At this point, if counsel is agreeable, and the court rules, I would like to introduce by reference the agreement with the City of Long Beach relating to this particular property, a copy of the agreement being attached to the petition, for an order authorizing H. F. Metcalf, trustee, to execute a certain agreement with the City of Long Beach, which petition was filed in these proceedings on September 12, 1938. May that be Trustee's next in order?

The Referee: That is the agreement with the City of Long Beach. Very well. This gentleman is still under oath. He appeared here the other day as a witness. [130]

ROY G. MEAD,

called as a witness by and on behalf of the Objector, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Cahill:

Q. What is your name, sir? A. Roy G. Mead.

Q. You are the Mr. Mead who heretofore testified in this proceeding? A. Yes, sir.

Q. Your qualifications were then stated?

A. They were.

Q. Mr. Mead, during this proceeding we had testimony from witnesses other than yourself concerning a Well No. 6 now situated on this six-acre parcel, and at least some statements by counsel, if not evidence, that that well had been deepened by the present lessee, The Universal Consolidated Oil Company, to a certain depth—I think Mr. Metcalf gave the depth at approximately 6,000 feet—and also there was a statement, I believe, that an electric log had been prepared and was somewhere available as to that particular well and as to the portion that had been deepened.

I will ask you at this time, Mr. Mead, whether an electric log has been presented to you in reference to that well. A. Yes, it has. [131]

Q. Have you had occasion to examine it?

A. I have.

Q. Do you have it with you? A. I have.

Q. Does it disclose the drilling of that portion of the well which we might refer to as the extended portion, the portion that has been described here as an attempt to go down to the Ford zone? A. It does.

(Testimony of Roy G. Mead)

Q. Have you reached any conclusion from an examination of that electric log whether the Ford zone underlies this particular property, at least in so far as the area concerning the sixth well is concerned?

Mr. Lynch: Don't you think we should have that log in evidence?

The Referee: I would like to have someone tell me what an electric log is.

Mr. Cahill: I will show you one now, your Honor.

The Referee: I have seen them drill all kinds of wells but I never knew anything about an electric log.

Mr. Cahill: I will hold it up so that your Honor can see the whole thing before you.

The Referee: Does that have any particular virtue over coredrilling?

The Witness: It has, your Honor.

The Referee: When you drill a well you drag up a core [132] from *time and* from that you geologists determine what might or might not be there, a thousand feet or so ahead of it, is that true?

The Witness: That is true.

The Referee: How does an electric log differ from a core?

The Witness: A core that you obtain is a physical part of the formation that is penetrated and is something which you can examine.

The Referee: I understand.

The Witness: An electric log is a log that is made by running an electric current down the well and you measure the resistivity of the electric current, and the potential of the electric current, the data you get is recorded by an instrument on a film and that is then reproduced on

(Testimony of Roy G. Mead)

paper. It makes a curve and from the curve you can determine whether you have shale or sand. If you have a sand in which oil occurs then the markings made by this electric log indicate whether it has water or oil. So that an electric log is more important than a core because you can tell whether there is water, whereas with a core analysis you cannot always tell the water.

The Referee: Does this electric log tell you when you hit oil or does it tell you when you hit water?

The Witness: In connection with geologic evidence, yes. For instance, here is a portion of the electric log which [133] shows production from the sand that they are now producing from. It is the 'Terminal Zone. On the right-hand side you will note—it is called the self-potential part of the curve. The curve has markings like a saw-tooth that extend outward. On the outward side the same points that extend to the right also extend to the left. That indicates the formation shown in that interval is productive of oil. The depth is shown on the left-hand *size* in figures showing the depth from the surface to the different intervals in the well.

There is a red portion of the log. That indicates the well—the lower part of that is marked off in red which means they plugged off that part of the well and cannot produce below the top of the point which is 4117 feet. Production on the left-hand side doesn't go over to the right. The projections on the right-hand side are irregular and do not extend out as far as production is concerned.

There is a third curve which has a dotted line and does not project to the right at all which indicates water. If this third curve would project over this dotted curve that

(Testimony of Roy G. Mead)

would indicate there was no water in the sand and for that reason they plugged that portion of the well off.

As you go down further on the log—it is already drilled on down to the lower zone, the Ford zone—as you go down further in the well there is a point here I have marked as AA called the marker point, as the point which cor- [134] responds with other logs which have been drilled in the area. That is the top of the upper zone. I arrived at that by a knowledge of the field and other electric logs, stand-in logs. The State of California publishes such a log. It is called a composite log of the area.

Mr. Lynch: What distance is that down?

The Witness: That distance is 3200 feet. Then there is another point down there marked A. V. which is the top of the lower Ford zone. I put those marks on there when I examined this log and compared it with the composite log. In the upper Ford zone there are some points that have water and some that have oil. This part along here on the left-hand side which does not show any noted jagged lines—it is mostly straight—indicates that that part is shale. It would be non-productive because oil is only produced from sand.

When we get down a little bit further, at about 5375 feet or 5350 feet, you will note that the projections to the right of the heavy line and then the dotted line—well, that indicates water. I presume Mr. Carrey has marked on there that that is water. That is correct.

Below that there is another point about 5380 feet—each one of these lines is 10 feet for the projection is quite strong to the right, and the dotted curve is also strong to the right. On the opposite side the other curve

(Testimony of Roy G. Mead)

is to the right. That indicates oil. Mr. Carrey indicated [135] that as being oil.

Then at about 5400 feet, a little further, there is water. Below that, at 5420 feet it shows water and the curve indicates it.

From that point on down all of the curve is quite strong to the right.

On the left-hand curve, the resistivity curve, all of that curve would indicate it is productive and has no water. If they were going to run a pipe in this hole in order to produce that they would run the pipe into the hole, a pipe with no perforations in it, and then they would perforate the portions that show there is oil in it. The portion shown as water would be left blank. They would run cement in up there first so that nothing would go into it and then they would put an instrument that shoots a bullet through the casing and formation and make the hole, and they perforate in that way all portions showing oil. The portions indicated as water from the electric log—usually they have a core sample to go by, too—they leave that blank so that they can produce a zone that is water and oil or all oil.

In my opinion this well could have been produced had it been completed in that manner.

The Referee: Am I to understand in the well that the hole was drilled down to that depth?

The Witness: Yes. This well was drilled down 5918 according to this electric log, but it was later plugged [136] back. They evidently plugged it back to 4117 feet and produced from the interval between 3958 and 4117 feet.

(Testimony of Roy G. Mead)

By Mr. Nelson:

Q. Mr. Mead, is it common oil field practice of the oil companies to take electric logs of wells they drill?

A. They always do that. Every operator takes a check of the well, makes an electric log, and usually they take cares, too. When they finish drilling as deep as they want to go, they run an electric log, but meanwhile they have taken the cores as they have drilled.

Q. The resistance of oil to the electric current is what makes these longer projections, is that right?

A. That is right. Salt water is a conductor and oil is not. That is how they arrive at this figure. It is a very complicated and technical theory about electric logs. They are used universally by every company that I know, and their engineers interpret the logs.

The Referee: What am I to understand about the failure of this company to strike oil at that depth of 5200 odd feet? That was due to what?

The Witness: That I don't know, your Honor. I know if I were the engineer for this company I would have recommended that that well be produced by running a casing in the well, cementing it and perforating on the points on the electric log. That indicated an attractive oil sand.

Q. By Mr. Nelson: Having drilled into that zone, the [137] fact is that they did not actually test the well. They did not get a flowing well, but after taking the log they did not run a casing to make a test?

A. Undoubtedly that is the case, but I don't know anything about the history of the well.

(Testimony of Roy G. Mead)

Q. You *don't anything* about their motives?

A. No, but I do know from the study of geology of that area that the Ford zone underlies the particular portion of the field that this well penetrated.

Q. The Ford zone has been very productive in other areas some distance from this?

A. Yes. There were some 75 wells produced from the Ford zone in what is called Block Four which this well enters. There are several faults in the field which cross the field north and south and divide it into blocks. Those fields hade to the east and between each field is a block. Between the Harbor fault going under this property, and the next field to the west, the Edison fault, is what is called Block Four. Block Four has some 78 producing wells from the Ford zone.

Q. When you say the fault hades to the east you mean it inclines?

A. Yes, it inclines to the east about 20 degrees from vertical.

The Referee: That fault prevents the flow of oil past the barrier or whatever it is underneath? [138]

The Witness: In the case of the Wilmington Field, all of those faults form a barrier from one block to the next. I have a little diagram which might show your Honor what a fault is.

The Referee: I have had some experience with water in San Bernardino County so I know something about faults.

The Witness: I made a little diagram here which will show you what I mean.

Mr. Lynch: Before we get to discussing any diagrams in the record and so that we will be clear what the witness

(Testimony of Roy G. Mead)

has been testifying about, don't you think that log ought to be put in? Otherwise, his testimony is meaningless because he has referred to it so much.

Mr. Cahill: Yes. We offer the log in evidence.

The Referee: All right.

Mr. Nelson: Who is offering it?

Mr. Lynch: It is immaterial whose exhibit it is. He is your witness.

Mr. Cahill: Before we offer it, your Honor.

The Referee: It will be marked next in order.

Q. By Mr. Cahill: The witness was about to give us one of the simplest demonstrations I have ever seen to explain what a fault is and how it affects the oil zones.

A. I have a cardboard here. The place where I have cut represents the fault. That is approximately the slant of the fault. The slant is the hade of the fault. Those [139] straight lines across the diagram marked in green and red represent the position of the zones before the fault took place. That is the position that the sediments were originally laid down in. Then there was a disturbance by the movement of the earth. The block on the east side of the faults moved down. That is true of every one of the blocks there. This moved down about in this position so all of those different zones were offset one with the other.

On this particular property—in order to get these zones straight and keep within their property lines—they had to divert the wells over by slant drilling in order to hit different zones and keep within property lines.

The two lower red lines indicate the Ford zone. After this had taken place the Ford zone was shifted over and the fault became sealed so that the portion of the zone